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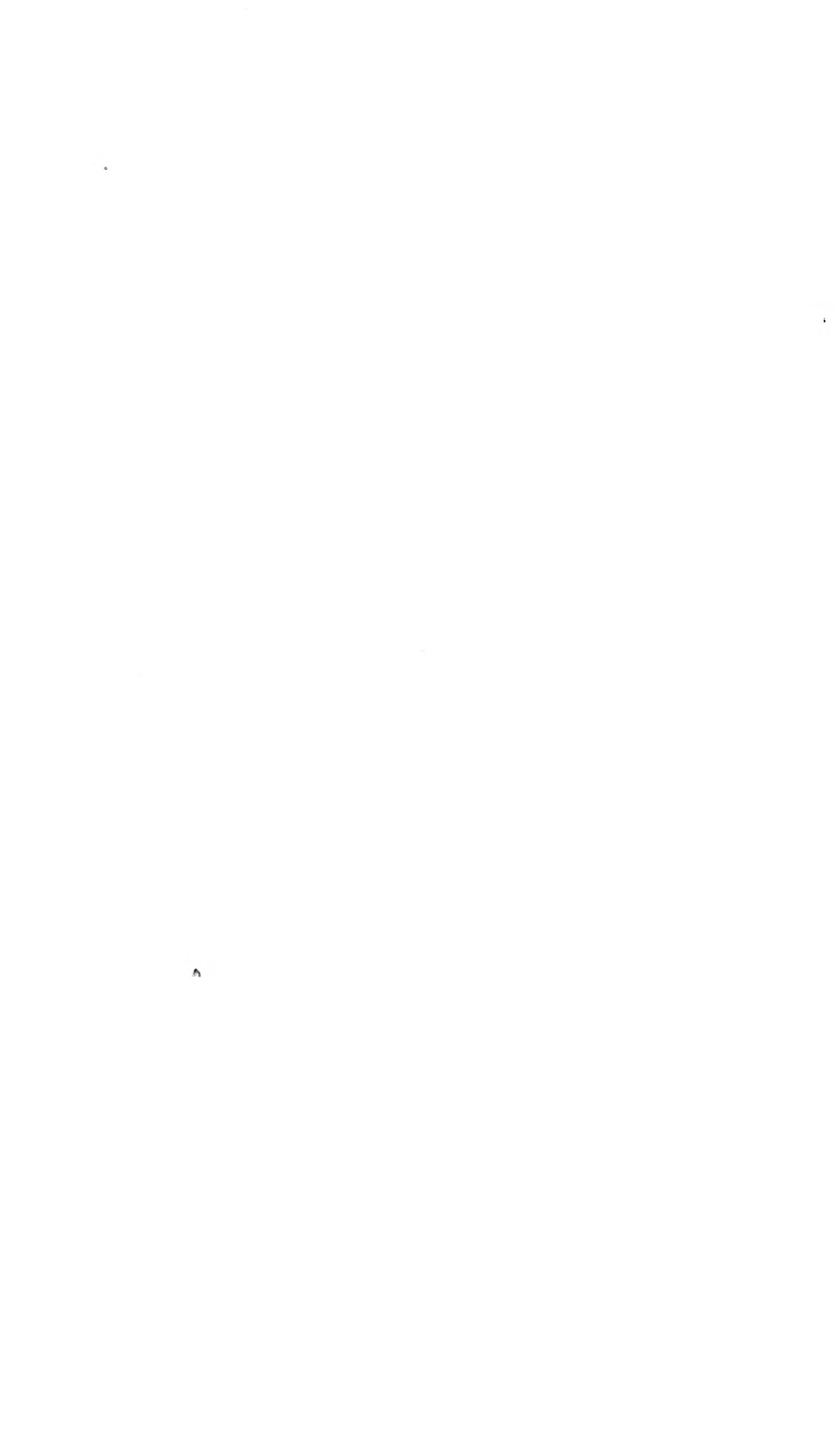
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# THE REVISED STATUTES

OF THE UNITED STATES

RELATING TO

Mineral Lands and Mining Reserves,

WITH THE

Circular Instructions of the General Land Office, a Digest of the Decisions of the Department of the Interior and the Opinions of the Attorneys-General, together with an Appendix of Special Statutes relating to Mining, a full collection of Forms and an elaborate Index.

BY

WALTER A. SKIDMORE.

SAN FRANCISCO:  
SUMNER WHITNEY & CO.,  
*Law Publishers.*  
1875.



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## PREFACE.

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In the recent revision of the Statutes of the United States, all the laws pertaining to mineral lands are brought together in Chapter Six of Title Thirty-two of the Revised Statutes, and all those portions of the acts of 1866, 1870, and 1872, which had not been previously repealed, together with the Coal Land act of 1873, were arranged and consolidated in that chapter, embracing sections 2318 to 2352 inclusive, as reprinted in this volume.

Important rights having vested and accrued under the earlier laws, we have deemed it necessary to place the repealed sections in smaller type beneath the corresponding sections of the Revised Statutes. Where the sections of the Revised Statutes are identical with those of former acts, it is so stated. The Revised Statutes of the United States have also been carefully examined for collateral sections having a bearing on mineral lands, and these sections have been printed under the head of Miscellaneous Provisions.

The latest Instructions of the General Land-Office to Registers and Receivers are given in full. The Digest of Decisions of the Department of the Interior, will, we trust, be found to state in a concise manner the rule of law or action laid down by the Department in every important case. The brief note on timber (p. 81) contains all the law on the subject.

The chapter on Water Rights (see Appendix) from the Civil Code of California, is inserted with the belief that it is the best expression of the custom or common law of the Pacific Coast as to the appropriation of water. The Appendix contains also the Sutro Tunnel act and the sections of the Railroad acts relating to mineral lands, and it is hoped the Index may prove a complete guide to the various subjects treated under the different departments of the book.



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THE

# Revised Mining Statutes

OF THE UNITED STATES.

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**Sec. 2318. Mineral lands reserved.**

In all cases, lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law.

**Sec. 2319. Mineral lands open to purchase by citizens.**

All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining-districts, so far as the same are applicable and not inconsistent with the laws of the United States.

Sec. 1 of the act of 1872, 17 U. S. Stat. 91, was identical with above.

Sec. 1 of the Statute of July 26, 1866, read as follows: SEC. 1. That the mineral lands of the public domain, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and occupation by all citizens of the United States, and those who have declared their intention to become citizens, subject to such regulations as may be prescribed by law, and subject also to the local customs or rules of miners in the several mining-districts, so far as the same may not be in conflict with the laws of the United States. [14 U. S. Stat. 251.]

See § 2329.

**Sec. 2320. Length of mining claims upon veins or lodes.**

Mining-claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, heretofore located, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. A mining-claim located after the tenth day of May, eighteen hundred and seventy-two, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining-claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the tenth day of May, eighteen hundred and seventy-two, render such limita-

tion necessary. The end-lines of each claim shall be parallel to each other.

Sec. 2 of the act of 1872, 17 U. S. Stat. 91, was the same as the above.

Sec. 4 of the Statute of July 26, 1863, read as follows: SEC. 4. That when such location and entry of a mine shall be upon unsurveyed lands, it shall and may be lawful, after the extension thereto of the public surveys, to adjust the surveys to the limits of the premises, according to the location and possession and plat aforesaid; and the surveyor-general may, in extending the surveys, vary the same from a rectangular form to suit the circumstances of the country, and the local rules, laws, and customs of miners: *Provided*, That no location hereafter made shall exceed two hundred feet in length along the vein for each locator, with an additional claim for discovery to the discoverer of the lode, with the right to follow such vein to any depth with all its dips, variations, and angles, together with a reasonable quantity of surface for the convenient working of the same, as fixed by local rules: *And provide further*, That no person may make more than one location on the same lode, and not more than three thousand feet shall be taken in any one claim by any association of persons. [14 U. S. Stat. 252.]

See §§ 2323, 2337.

#### Sec. 2321. Proof of citizenship.

Proof of citizenship, under this chapter, may consist, in the case of an individual, of his own affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge, or upon information and belief; and in the case of a corporation organized under the laws of the United States, or of any State or Territory thereof, by the filing of a certified copy of their charter or certificate of incorporation.

The last clause of Sec. 7 of the act of 1872, 17 U. S. Stat. 94, was the same as the above, with the following addition: "and nothing herein contained shall be construed to prevent the alienation of the title conveyed by a patent for a mining claim to any person whatever," which language is now incorporated in the last clause of Sec. 2326.

See § 2335.

#### Sec. 2322. Locators' rights of possession and enjoyment.

The locators of all mining locations heretofore made, or which shall hereafter be made, on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim exists on the tenth day of May, eighteen hundred and seventy-two, so long as they comply with the laws of the United States, and with State, territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclu-

sive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface-lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side-lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end-lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. And nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.

Sec. 3 of the act of 1872, 17 U. S. Stat. 91, was the same as the above.  
See §§ 2320, 2324.

**Sec. 2323. Owners of tunnels, rights of.**

Where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid; but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel.

Sec. 4 of the act of 1872, 17 U. S. Stat. 92, was the same as the above.  
See § 2320.



**Sec. 2324. Miners' regulations; expenditures and improvements.**

The miners of each mining-district may make regulations not in conflict with the laws of the United States, or with the laws of the State or territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining-claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining-claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. On each claim located after the tenth day of May, eighteen hundred and seventy-two, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. On all claims located prior to the tenth day of May, eighteen hundred and seventy-two, ten dollars' worth of labor shall be performed or improvements made by the tenth day of June, eighteen hundred and seventy-four, and each year thereafter, for each one hundred feet in length along the vein, until a patent has been issued therefor; but where such claims are held in common, such expenditure may be made upon any one claim; and upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required hereby, the co-owners who have performed the labor or made the improvements, may, at the expiration of the year, give such delinquent co-owner personal notice in writing, or notice by publication in the newspaper published

nearest the claim, for at least once a week for ninety days, and if, at the expiration of ninety days after such notice in writing or by publication, such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section, his interest in the claim shall become the property of his co-owners who have made the required expenditures.—[See Amendment of Feb. 11, 1875; p. 33.

Sec. 5 of the act of May 10, 1872, 17 U. S. Stat. 92, substituted the words: "each year for each hundred feet," *instead of the words*, "by the tenth day of June, eighteen hundred and seventy-four, and each year thereafter," in the clause relating to expenditures, otherwise the section was the same.

An act of Congress, approved March first, eighteen hundred and seventy-three, amended Sec. 5, of the act of 1872, (17 U. S. Stat. 92,) so as to read as follows: "That the time for the first annual expenditure on claims located prior to the passage of said act shall be extended to the tenth day of June, eighteen hundred and seventy-four."

An act of Congress, approved June six, eighteen hundred and seventy-four, further extended said time for first annual expenditure to the first day of January, eighteen hundred and seventy-five.

See §§ 2321, 2322.

#### Sec. 2325. Patents for mineral lands, how obtained.

A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this chapter, having claimed and located a piece of land for such purposes, who has, or have, complied with the terms of this chapter, may file in the proper land-office an application for a patent, under oath, showing such compliance, together with a plat and field-notes of the claim or claims in common, made by or under the direction of the United States surveyor-general, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat, previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such land-office, and shall thereupon be entitled to a patent for the land, in the manner following: The register of the land-office, upon the filing of such applica-

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
Washington, D. C., March 3, 1880.

REGISTERS AND RECEIVERS,  
UNITED STATES DISTRICT LAND OFFICES:

GENTLEMEN: The following act of Congress, approved January 22, 1880, is furnished for your official guidance, and for the information of those interested.

Very respectfully,

J. M. ARMSTRONG,  
*Acting Commissioner.*

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[PUBLIC—No. 6.]

AN ACT to amend sections twenty-three hundred and twenty-four and twenty-three hundred and twenty-five of the Revised Statutes of the United States concerning mineral lands.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section twenty-three hundred and twenty-five of the Revised Statutes of the United States be amended by adding thereto the following words: "*Provided*, That where the claimant for a patent is not a resident of or within the land district wherein the vein, lode, ledge, or deposit sought to be patented is located, the application for patent and the affidavits required to be made in this section by the claimant for such patent may be made by his, her, or its authorized agent, where said agent is conversant with the facts sought to be established by said affidavits: *And provided*, That this section shall apply to all applications now pending for patents to mineral lands."

SEC. 2. That section twenty-three hundred and twenty-four of the Revised Statutes of the United States be amended by adding the following words: "*Provided*, That the period within which the work required to be done annually on all unpatented mineral claims shall commence on the first day of January succeeding the date of location of such claim, and this section shall apply to all claims located since the tenth day of May, anno Domini eighteen hundred and seventy-two."

Approved, January 22, 1880.

○

Sec. 3 of the Mining Statute of July 26, 1866, read as follows: SEC. 3. That upon the filing of the diagram as provided in the second section of this act, and posting the same in a conspicuous place on the claim, together with a notice of intention to apply for a patent, the register of the land-office shall publish a notice of the same in a newspaper published nearest to the location of said claim, and shall also post such notice in his office for the period of ninety days; and after the expiration of said period, if no adverse claim shall have been filed, it shall be the duty of the surveyor-general, upon application of the party, to survey the premises and make a plat thereof, indorsed with his approval, designating the number and description of the location, the value of the labor and improvements, and the character of the vein exposed; and upon the payment to the proper officer of five dollars per acre, together with the cost of such survey, plat, and notice, and giving satisfactory evidence that said diagram and notice have been posted on the claim during said period of ninety days, the register of the land-office shall transmit to the General Land-Office said plat, survey, and description, and a patent shall issue for the same thereupon. But said plat, survey, or description shall in no case cover more than one vein or lode, and no patent shall issue for more than one vein or lode, which shall be expressed in the patent issued. [14 U. S. Stat. 252.]

See §§ 2325, 2327, 2328, 2333.

#### **Sec. 2326. Adverse claim, proceedings on.**

Where an adverse claim is filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. It shall be the duty of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment; and a failure so to do shall be a waiver of his adverse claim. After such judgment shall have been rendered, the party entitled to the possession of the claim, or any portion thereof, may, without giving further notice, file a certified copy of the judgment-roll with the register of the land-office, together with the certificate of the surveyor-general that the requisite amount of labor has been expended, or improvements made thereon, and the description required in other cases, and shall pay to the receiver five dollars per acre for his claim, together with the proper fees, whereupon the

whole proceedings and the judgment-roll shall be certified by the register to the Commissioner of the General Land-Office, and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess. If it appears from the decision of the court, that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim, with the proper fees and file the certificate and description by the surveyor-general, whereupon the register shall certify the proceedings and judgment-roll to the Commissioner of the General Land-Office, as in the preceding case, and patents shall issue to the several parties according to their respective rights. Nothing herein contained shall be construed to prevent the alienation of the title conveyed by a patent for a mining-claim to any person whatever.

Sec. 7 of the act of 1872, 17 U. S. Stat. 93, was the same as the above, with the exception of the omission of the clause relating to proofs of citizenship, which was identical with Sec. 2321, *ante*.

Sec. 6 of the Statute of July 26, 1866, read as follows: Sec. 6. That whenever any adverse claimants to any mine, located and claimed as aforesaid, shall appear before the approval of the survey, as provided in the third section of this act, all proceedings shall be stayed until a final settlement and adjudication, in the courts of competent jurisdiction, of the rights of possession to such claim, when a patent may issue as in other cases. [14 U. S. Stat. 252.]

See § 2325.

#### **Sec. 2327. Description of vein-claims on surveyed and unsurveyed lands.**

The description of vein or lode claims, upon surveyed lands, shall designate the location of the claim with reference to the lines of the public surveys, but need not conform therewith; but where a patent shall be issued for claims upon unsurveyed lands, the surveyor-general, in extending the surveys, shall adjust the same to the boundaries of such patented claim, according to the plat or description thereof, but so as in no case to interfere with or change the location of any such patented claim.

Sec. 8 of the act of 1872, 17 U. S. Stat. 94, was the same as the above.

See § 2325.

**Sec. 2328. Pending applications ; existing rights.**

Applications for patents for mining-claims, under former laws now pending, may be prosecuted to a final decision in the General Land-Office ; but in such cases where adverse rights are not affected thereby, patents may issue in pursuance of the provisions of this chapter ; and all patents for mining-claims upon veins or lodes heretofore issued shall convey all the rights and privileges conferred by this chapter, where no adverse rights existed on the tenth day of May, eighteen hundred and seventy-two.

Sec. 9 of the act of 1872, 17 U. S. Stat. 91, read: Sec. 9. That sections one, two, three, four and six of an act entitled "An act granting the right of way to ditch and canal owners over the public lands, and for other purposes," approved July twenty-sixth, eighteen hundred and sixty-six, are hereby repealed, but such repeal shall not affect existing rights. Applications for patents for mining-claims now pending may be prosecuted to a final decision in the General Land-Office ; but in such cases where adverse rights are not affected thereby, patents may issue in pursuance of the provisions of this act ; and all patents for mining-claims heretofore issued under the act of July twenty sixth, eighteen hundred and sixty-six, shall convey all the rights and privileges conferred by this act where no adverse rights exist at the time of the passage of this act.—[For Secs. 1, 2, 3, 4 and 6, of the act of 1866, repealed by Sec. 9 of the act of 1872, see notes to Secs. 2319, 2320, 2325 and 2326, *ante*.]

See §§ 2325, 2326.

**Sec. 2329. Conformity of placer-claims to surveys ; limit of.**

Claims usually called "placers," including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims ; but where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands.

The first clause of Sec. 12 of the act of 1870, 16 U. S. Stat. 217, was substantially the same as the above. [See note to Sec. 2330.]

See §§ 2319, 2331, 2334.

**Sec. 2330. Subdivision of ten-acre tracts ; limit of placer locations.**

Legal subdivisions of forty acres may be subdivided into ten-acre tracts ; and two or more persons, or associations of persons, having contiguous claims of any size, although such

claims may be less than ten acres each, may make joint entry thereof; but no location of a placer-claim, made after the ninth day of July, eighteen hundred and seventy, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any bona-fide pre-emption or homestead claim upon agricultural lands, or authorize the sale of the improvements of any bona-fide settler to any purchaser.

Sec. 12 of the act of 1870, 16 U. S. Stat. 217, read: SEC. 12. That claims usually called "placers," including all forms of deposit excepting veins of quartz, or other rock in place, shall be subject to entry and patent under this act, under like circumstances and conditions and upon similar proceedings as are provided for vein or lode claims: *Provided*, That where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands, no further survey or plat in such case being required, and the lands may be paid for at the rate of two dollars and fifty cents per acre: *Provided further*, That legal subdivisions of forty acres may be subdivided into ten-acre tracts; and that two or more persons or associations of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof: *And provided further*, That no location of a placer-claim, hereafter made, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any *bona fide* pre-emption or homestead claim upon agricultural lands, or authorize the sale of the improvements of any *bona fide* settler to any purchaser.

See § 2334.

**Sec. 2331. Survey of placer claims; limitation of.**

Where placer-claims are upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer-mining claims located after the tenth day of May, eighteen hundred and seventy-two, shall conform as near as practicable with the United States system of public-land surveys, and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant; but where placer-claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where by the segregation of mineral land in any legal

subdivision, a quantity of agricultural land less than forty acres remains, such fractional portion of agricultural land may be entered by any party qualified by law, for homestead or pre-emption purposes.

Sec. 10 of the act of 1872, 17 U. S. Stat. 94, read: **SEC. 10.** That the act entitled "An act to amend an act granting the right of way to ditch and canal owners over the public lands, and for other purposes," approved July ninth, eighteen hundred and seventy, shall be and remain in full force, except as to the proceedings to obtain a patent, which shall be similar to the proceedings prescribed by sections six and seven of this act, for obtaining patents to vein or lode claims; but where said placer-claims shall be upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer mining-claims hereafter located shall conform as near as practicable with the United States system of public land surveys, and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant, but where placer-claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands: *Provided*, That proceedings now pending may be prosecuted to their final determination under existing laws; but the provisions of this act, when not in conflict with existing laws, shall apply to such cases: *And provided also*, That where by the segregation of mineral land in any legal subdivision a quantity of agricultural land less than forty acres remains, said fractional portion of agricultural land may be entered by any party qualified by law for homestead or pre-emption purposes.

Sec. 16 of the act of 1870, 16 U. S. Stat. 214, read: **SEC. 16.** That so much of the act of March third, eighteen hundred and fifty-three, entitled "An act to provide for the survey of the public lands in California, the granting of pre-emption rights, and for other purposes," as provides that none other than township lines shall be surveyed where the lands are mineral, is hereby repealed. And the public surveys are hereby extended over all such lands: *Provided*, That all subdividing of surveyed lands into lots less than one hundred and sixty acres may be done by county and local surveyors at the expense of the claimants: *And provided further*, That nothing herein contained shall require the survey of waste or useless lands.

See §§ 2329, 2334.

### **Sec. 2332. Evidence of possession to establish right to patent.**

Where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations for mining-claims of the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this chapter, in the absence of any adverse claim; but nothing in this chapter shall be deemed to impair any lien which may have attached in any way whatever to any mining-claim or property thereto attached prior to the issuance of a patent.



Sec. 13 of the act of 1870, 16 U. S. Stat. 217, read: Sec. 13. That where said person or association, they and their grantors, shall have held and worked their said claims for a period equal to the time prescribed by the statute of limitations for mining-claims of the State or territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this act, in the absence of any adverse claim: *Provided however*, That nothing in this act shall be deemed to impair any lien which may have attached in any way whatever to any mining-claim or property thereto attached prior to the issuance of a patent.

See § 2324.

### Sec. 2333. Proceedings for patent for placer claim, etc.

Where the same person, association or corporation is in possession of a placer-claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer-claim, with the statement that it includes such vein or lode, and in such case\* a patent shall issue for the placer-claim, subject to the provisions of this chapter, including such vein or lode, upon the payment of five dollars per acre for such vein or lode claim, and twenty-five feet of surface on each side thereof. The remainder of the placer-claim, or any placer-claim not embracing any vein or lode claim, shall be paid for at the rate of two dollars and fifty cents per acre, together with all costs of proceedings; and where a vein or lode, such as is described in section twenty-three hundred and twenty, is known to exist within the boundaries of a placer-claim, an application for a patent for such placer-claim, which does not include an application for the vein or lode claim shall be construed as a conclusive declaration that the claimant of the placer-claim has no right of possession of the vein or lode claim; but where the existence of a vein or lode in a placer-claim is not known, a patent for the placer-claim shall convey all valuable mineral and other deposits within the boundaries thereof.

\* Sec. 11 of the act of 1872, 17 U. S. Stat. 91, was the same as the above, with the addition of the words following, in parenthesis, after the words "and in such case," fifth line: (subject to the provisions of this act and the act entitled "An act to amend an act granting the right of way to ditch and canal owners over the public lands, and for other purposes," approved July ninth, eighteen hundred and seventy,) in lieu of the words, "subject to the provisions of this chapter."

See § 2325.

**Sec. 2331. Surveyor-general to appoint surveyors of mining claims.**

The surveyor-general of the United States may appoint in each land-district containing mineral lands as many competent surveyors as shall apply for appointment to survey mining-claims. The expenses of the survey of vein or lode claims, and the survey and subdivision of placer-claims into smaller quantities than one hundred and sixty acres, together with the cost of publication of notices, shall be paid by the applicants, and they shall be at liberty to obtain the same at the most reasonable rates, and they shall also be at liberty to employ any United States deputy surveyor to make the survey. The Commissioner of the General Land-Office shall also have power to establish the maximum charges for surveys and publication of notices under this chapter; and, in case of excessive charges for publication, he may designate any newspaper published in a land-district where mines are situated, for the publication of mining-notices in such district, and fix the rates to be charged by such paper; and to the end that the commissioner may be fully informed on the subject, each applicant shall file with the register a sworn statement of all charges and fees paid by such applicant for publication and surveys, together with all fees and money paid the register and the receiver of the land-office, which statement shall be transmitted with the other papers in the case to the Commissioner of the General Land-Office.

Sec. 12 of the act of 1872, 17 U. S. Stat. 95, was the same as the above, with the following addition: "The fees of the register and the receiver shall be five dollars each for filing and acting upon each application for patent or adverse claim filed, and they shall be allowed the amount fixed by law for reducing testimony to writing, when done in the land-office, such fees and allowances to be paid by the respective parties; and no other fees shall be charged by them in such cases. Nothing in this act shall be construed to enlarge or affect the rights of either party in regard to any property in controversy at the time of the passage of this act, or of the act entitled 'An act granting the right of way to ditch and canal owners over the public lands, and for other purposes,' approved July twenty-sixth, eighteen hundred and sixty-six, nor shall this act affect any right acquired under said act; and nothing in this act shall be construed to repeal, impair, or in any way affect the provisions of the act entitled 'An act granting to A. Sutro the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode, in the State of Nevada,' approved July twenty-fifth, eighteen hundred and sixty six."

For fees of registers and receivers, see § 2233.

See §§ 2330, 2331, 2406.

**Sec. 2335. Verification of affidavits, etc.**

All affidavits required to be made under this chapter may be verified before any officer authorized to administer oaths within the land-district where the claims may be situated, and all testimony and proofs may be taken before any such officer, and when duly certified by the officer taking the same, shall have the same force and effect as if taken before the register and receiver of the land-office. In cases of contest as to the mineral or agricultural character of land, the testimony and proofs may be taken as herein provided, on personal notice of at least ten days to the opposing party; or if such party cannot be found, then by publication of at least once a week for thirty days in a newspaper, to be designated by the register of the land-office as published nearest to the location of such land; and the register shall require proof that such notice has been given.

Sec. 13 of the act of 1872, 17 U. S. Stat. 95, was the same as the above.

Sec. 14 of the act of 1870, 16 U. S. Stat. 217, read: SEC. 14. That all *ex parte* affidavits required to be made under this act, or the act of which it is amendatory, may be verified before any officer authorized to administer oaths within the land district where the claims may be situated.

See § 2321.

**Sec. 2336. Where veins intersect, etc.**

Where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection; but the subsequent location shall have the right of way through the space of intersection for the purposes of the convenient working of the mine. And where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection.

Sec. 14 of the act of 1872, 17 U. S. Stat. 96, was the same as the above.

**Sec. 2337. Patents for non-mineral lands, etc.**

Where non-mineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode, for mining or milling purposes, such non-adjacent surface-

ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location hereafter made of such non-adjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode. The owner of a quartz-mill or reduction-works not owning a mine in connection therewith may also receive a patent for his mill-site, as provided in this section.

Sec. 15 of the act of 1872, 17 U. S. Stat. 96, was the same as the above.  
See §§ 2320, 2324.

**Sec. 2333. State or territorial legislation concerning mineral lands.**

As a condition of sale in the absence of necessary legislation by Congress, the local legislature of any State or Territory may provide rules for working mines, involving easements, drainage, and other necessary means to their complete development; and those conditions shall be fully expressed in the patent.

Sec. 5 of the act of 1866, 14 U. S. Stat. 252, was the same as the above.

**Sec. 2339. Vested rights to use of water; right of way for canals, etc.**

Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

Sec. 9 of the act of 1866, 14 U. S. Stat. 253, was the same as the above.  
See § 2324.

**Sec. 2340. Patents, etc., subject to vested water-rights.**

All patents granted, or pre-emption or homesteads allowed, shall be subject to any vested and accrued water-rights, or rights to ditches and reservoirs used in connection with such water-rights, as may have been acquired under or recognized by the preceding section.

Sec. 17 of the act of 1870, 16 U. S. Stat. 218, read: SEC. 17. That none of the rights conferred by sections five, eight and nine of the act to which this act is amendatory shall be abrogated by this act, and the same are hereby extended to all public lands affected by this act; and all patents granted, or pre-emption or homesteads allowed, shall be subject to any vested and accrued water-rights, or rights to ditches and reservoirs used in connection with such water-rights as may have been acquired under or recognized by the ninth section of the act of which this act is amendatory. But nothing in this act shall be construed to repeal, impair, or in any way affect the provisions of the "Act granting to A. Sutro the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode, in the State of Nevada," approved July twenty-fifth, eighteen hundred and sixty-six.

See notes to §§ 2338, 2339, 2344.

**Sec. 2341. Non-mineral lands open to homesteads.**

Wherever, upon the lands heretofore designated as mineral lands, which have been excluded from survey and sale, there have been homesteads made by citizens of the United States, or persons who have declared their intention to become citizens, which homesteads have been made, improved, and used for agricultural purposes, and upon which there have been no valuable mines of gold, silver, cinnabar, or copper discovered, and which are properly agricultural lands, the settlers or owners of such homesteads shall have a right of pre-emption thereto, and shall be entitled to purchase the same at the price of one dollar and twenty-five cents per acre, and in quantity not to exceed one hundred and sixty acres; or they may avail themselves of the provisions of chapter five of this title relating to "Homesteads."

Sec. 10 of the act of 1866, 14 U. S. Stat. 253, was substantially the same as the above, with the addition of the following words, after the words "one hundred and sixty acres," thirteenth line: "or said parties may avail themselves of the provisions of the act of Congress, approved May twentieth, eighteen hundred and sixty-two, entitled 'An act to secure homesteads to actual settlers on the public domain,' and acts amendatory thereof."

See § 2342.

**Sec. 2342. Mineral lands, how set apart as agricultural.**

Upon the survey of the lands described in the preceding section, the Secretary of the Interior may designate and set apart such portions of the same as are clearly agricultural lands, which lands shall thereafter be subject to pre-emption and sale as other public lands, and be subject to all the laws and regulations applicable to the same.

Sec. 11 of the act of 1866, 14 U. S. Stat. 253, was the same as the above.

See § 2341, 2258.

**Sec. 2343. Power of the President to provide districts and officers.**

The President is authorized to establish additional land-districts, and to appoint the necessary officers under existing laws, wherever he may deem the same necessary for the public convenience in executing the provisions of this chapter.

Sec. 7 of the act of 1866, 14 U. S. Stat. 252, was the same as the above.

**Sec. 2344. Provisions of this chapter not to affect certain rights.**

Nothing contained in this chapter shall be construed to impair, in any way, rights or interests in mining property acquired under existing laws; nor to affect the provisions of the act entitled, "An act granting to A. Sutro the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode, in the State of Nevada," approved July twenty-five, eighteen hundred and sixty-six.

For Sec. 17 of the act of 1870, 16 U. S. Stat. 218, see note to Sec. 2340, *ante*.

Sec. 8 of the act of 1866, 14 U. S. Stat. 253, read: Sec. 8. That the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.

The last clause of Sec. 16 of act of 1872, 17 U. S. Stat. 96, read as follows: "*Provided*, That nothing contained in this act shall be construed to impair, in any way, rights or interests in mining property acquired under existing laws."

For Sutro Tunnel Act, see appendix.

**Sec. 2345. Mineral lands in certain States excepted.**

The provisions of the preceding sections of this chapter shall not apply to the mineral lands situated in the States of Michigan, Wisconsin, and Minnesota, which are declared

free and open to exploration and purchase, according to legal subdivisions in like manner as before the tenth day of May, eighteen hundred and seventy-two; and any bona-fide entries of such lands within the States named, since the tenth day of May, eighteen hundred and seventy-two, may be patented without reference to any of the foregoing provisions of this chapter. Such lands shall be offered for public sale in the same manner, at the same minimum price, and under the same rights of pre-emption as other public lands.

Act of Feb. 18, 1873, 17 U. S. Stat. 463, is to the same effect.

**Sec. 2346. What grants not to include mineral lands**

No act passed at the first session of the Thirty-eighth Congress, granting lands to States or corporations to aid in the construction of roads or for other purposes, or to extend the time of grants made prior to the thirtieth day of January, eighteen hundred and sixty-five, shall be so construed as to embrace mineral lands, which, in all cases are reserved exclusively to the United States, unless otherwise specially provided in the act or acts making the grant.

Act of Jan. 30, 1865, 13 U. S. Stat. 567, was the same as the above.

**Sec. 2347. Entry of coal-lands.**

Every person above the age of twenty-one years, who is a citizen of the United States, or who has declared his intention to become such, or any association of persons severally, qualified as above, shall, upon application to the register of the proper land-office, have the right to enter by legal subdivisions any quantity of vacant coal-lands of the United States not otherwise appropriated or reserved by competent authority, not exceeding one hundred and sixty acres to such individual person, or three hundred and twenty acres to such association, upon payment to the receiver of not less than ten dollars per acre, for such lands where the same shall be situated more than fifteen miles from any completed railroad, and not less than twenty dollars per acre for such lands as shall be within fifteen miles of such road.

Sec. 1, act of 1873, 17 U. S. Stat. 607, is identical with the above.

**Sec. 2348. Pre-emption of coal-lands.**

Any person or association of persons severally qualified as above provided, who have opened and improved, or shall hereafter open and improve any coal mine or mines upon the public lands, and shall be in actual possession of the same, shall be entitled to a preference-right of entry under the preceding section, of the mines so opened and improved: *Provided*, That when any association of not less than four persons, severally qualified as above provided, shall have expended not less than five thousand dollars in working and improving any such mine or mines, such association may enter not exceeding six hundred and forty acres, including such mining improvements.

Sec. 2, act of 1873, 17 U. S. Stat. 607, is identical with the above.

**Sec. 2349. Pre-emption of coal-lands; when claims to be presented.**

All claims under the preceding section must be presented to the register of the proper land-district within sixty days after the date of actual possession and the commencement of improvements on the land, by the filing of a declaratory statement therefor; but when the township plat is not on file at the date of such improvement, filing must be made within sixty days from the receipt of such plat at the district office; and where the improvements shall have been made prior to the expiration of three months from the third day of March, eighteen hundred and seventy-three, sixty days from the expiration of such three months shall be allowed for the filing of a declaratory statement, and no sale under the provisions of this section shall be allowed until the expiration of six months from the third day of March, eighteen hundred and seventy-three.

Sec. 3, act of 1873, 17 U. S. Stat. 607, was the same as the above.

**Sec. 2350. Only one entry allowed.**

The three preceding sections shall be held to authorize only one entry by the same person or association of persons; and no association of persons, any member of which shall



have taken the benefit of such sections, either as an individual or as a member of any other association, shall enter or hold any other lands under the provisions thereof; and no member of any association which shall have taken the benefit of such section shall enter or hold any other lands under their provisions; and all persons claiming under section twenty-three hundred and forty-eight shall be required to prove their respective rights and pay for the lands filed upon within one year from the time prescribed for filing their respective claims; and upon failure to file the proper notice or to pay for the land within the required period, the same shall be subject to entry by any other qualified applicant.

Sec. 4, act of 1873, 17 U. S. Stat. 607, was the same as the above.

**Sec. 2351. Conflicting claims.**

In case of conflicting claims upon coal-lands where the improvements shall be commenced after the third day of March, eighteen hundred and seventy-three, priority of possession and improvement, followed by proper filing and continued good faith, shall determine the preference-right to purchase. And also where improvements have already been made prior to the third day of March, eighteen hundred and seventy-three, division of the land claimed may be made by legal subdivisions, to include as near as may be the valuable improvements of the respective parties. The Commissioner of the General Land-Office is authorized to issue all needful rules and regulations for carrying into effect the provisions of this and the four preceding sections.

Sec. 5, act of 1873, 17 U. S. Stat. 607, was the same as the above. †

**Sec. 2352. Existing rights.**

Nothing in the five preceding sections shall be construed to destroy or impair any rights which may have attached prior to the third day of March, eighteen hundred and seventy-three, or to authorize the sale of lands valuable for mines of gold, silver, or copper.

Sec. 6, act of 1873, 17 U. S. Stat. 607, was the same as the above. †

### MISCELLANEOUS PROVISIONS:

- SECTION 910. Possessory actions for recovery of mining titles.
2238. Fees and commissions of registers and receivers.
2238. Lands not subject to pre-emption.
2386. Title to town-lots subject to mineral rights.
2406. Public surveys extended over mineral lands.
2471. Penalty for false making or altering instruments concerning mineral lands in California.
2472. Penalty for false making or dating instruments concerning mineral lands on Mexican grants in California.
2473. Penalty for presenting false or counterfeited papers, or prosecuting fraudulent suit for mineral lands in California.

**Sec. 910. Possessory actions concerning mining titles.**

No possessory action between persons, in any court of the United States, for the recovery of any mining title, or for damages to any such title, shall be affected by the fact that the paramount title to the land in which such mines lie is in the United States; but each case shall be adjudged by the law of possession.

Sec. 9, act of Feb. 27, 1865, 13 U. S. Stat. 441.

**Sec. 2238. Registers' and Receivers' fees and commissions.**

Registers and receivers, in addition to their salaries, shall be allowed each the following fees and commissions, namely:

1. A fee of one dollar for each declaratory statement filed and for services in acting on pre-emption claims.
2. A commission of one per centum on all moneys received at each receiver's office.
3. A commission to be paid by the homestead applicant, at the time of entry, of one per centum on the cash price, as fixed by law, of the land applied for; and a like commission when the claim is finally established, and the certificate therefor issued as the basis of a patent.
4. The same commission on lands entered under any law to encourage the growth of timber on western prairies, as allowed when the like quantity of land is entered with money.
5. For locating military bounty-land warrants, issued since the eleventh day of February, eighteen hundred and

forty-seven, and for locating agricultural-college land-serip, the same commission, to be paid by the holder or assignee of each warrant or serip, as is allowed for sales of the public lands for cash, at the rate of one dollar and twenty-five cents per acre.

6. A fee, in donation cases, of five dollars for each final certificate for one hundred and sixty acres of land, ten dollars for three hundred and twenty acres, and fifteen dollars for six hundred and forty acres.

7. In the location of lands by States and corporations under grants from Congress for railroads and other purposes, (except for agricultural colleges,) a fee of one dollar for each final location of one hundred and sixty acres; to be paid by the State or corporation making such location.

8. A fee of five dollars per diem for superintending public-land sales at their respective offices; and, to each receiver, mileage in going to and returning from depositing the public moneys received by him.

9. A fee of five dollars for filing and acting upon each application for patent or adverse claim filed for mineral lands, to be paid by the respective parties.

10. Registers and receivers are allowed, jointly, at the rate of fifteen cents per hundred words for testimony reduced by them to writing for claimants, in establishing pre-emption and homestead rights.

11. A like fee as provided in the preceding subdivision, when such writing is done in the land-office, in establishing claims for mineral lands.

12. Registers and receivers in California, Oregon, Washington, Nevada, Colorado, Idaho, New Mexico, Arizona, Utah, Wyoming, and Montana, are each entitled to collect and receive fifty per centum on the fees and commissions provided for in the first, third, and tenth subdivisions of this section.

<sup>1</sup> The subdivisions, 9 and 11, relating to mineral lands, are substantially same as Sec. 12 of act of May 19, 1872, 17 U. S. Stat. 95.

See note to Sec. 2334.

**Sec. 2258. Lands not subject to pre-emption.**

The following classes of lands, unless otherwise specially provided for by law, shall not be subject to the rights of pre-emption, to wit :

1. Lands included in any reservation by any treaty, law, or proclamation of the President, for any purpose.

2. Lands included within the limits of any incorporated town, or selected as the site of a city or town.

3. Lands actually settled and occupied for purposes of trade and business, and not for agriculture.

4. Lands on which are situated any known salines or mines.

Sec. 10, act of Sept. 4, 1841, 5 U. S. Stat. 455.

See § 3242.

**Sec. 2386. Title to town-lots subject to mineral rights.**

Where mineral veins are possessed, which possession is recognized by local authority, and to the extent so possessed and recognized, the title to town-lots to be acquired shall be subject to such recognized possession and the necessary use thereof; but nothing contained in this section shall be so construed as to recognize any color of title in possessors for mining purposes, as against the United States.

Sec. 2, act of March 3, 1865, 13 U. S. Stat. 530.

**Sec. 2406. Public surveys extended over mineral lands.**

There shall be no further geological survey by the Government, unless hereafter authorized by law. The public surveys shall extend over all mineral lands; and all subdividing of surveyed lands into lots less than one hundred and sixty acres may be done by county and local surveyors at the expense of claimants; but nothing in this section contained shall require the survey of waste or useless lands.

Sec. 9, act of July 9, 1870, 16 U. S. Stat. 218.

See § 2331.

**Sec. 2471. Penalty for offences concerning mineral lands in California.**

Every person who falsely makes, alters, forges, or counterfeits, or causes or procures to be falsely made, altered,

forged or counterfeited; or willingly aids and assists in the false making, altering, forging, or counterfeiting any petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, diseño, map, expediente, or part of an expediente, or any title-paper, or evidence of right, title, or claim to lands, mines, or minerals in California, or any instrument of writing whatever in relation to lands or mines or minerals in the State of California, for the purpose of setting up or establishing against the United States any claim, right, or title to lands, mines, or minerals within the State of California, or for the purpose of enabling any person to set up or establish any such claim; and every person, who, for such purpose, utters or publishes as true and genuine any such false, forged, altered, or counterfeited petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, diseño, map, expediente or part of an expediente, title-paper, evidence of right, title, or claim to lands or mines or minerals in the State of California, or any instrument of writing whatever in relation to lands or mines or minerals in the State of California, shall be punishable by imprisonment at hard labor not less than three years and not more than ten years, and by a fine of not more than ten thousand dollars.

Sec. 1, act of May 18, 1848, 11 U. S. Stat. 290.

**Sec. 2472. Penalty for offences concerning Mexican grants in California.**

Every person who makes, or causes or procures to be made, or willingly aids and assists in making any falsely dated petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, diseño, map, expediente or part of an expediente, or any title-paper, or written evidence of right, title, or claim, under Mexican authority, to any lands, mines, or minerals in the State of California, or any instrument of writing in relation to lands or mines or minerals in the State of California, having a false date, or falsely purporting to be made by any Mexican officer or authority prior to the seventh day of July, eighteen

hundred and forty-six, for the purpose of setting up or establishing any claim against the United States to lands or mines or minerals within the State of California, or of enabling any person to set up or establish any such claim; and every person who signs his name as governor, secretary, or other public officer acting under Mexican authority, to any instrument of writing falsely purporting to be a grant, concession, or denouncement under Mexican authority, and during its existence in California, of lands, mines, or minerals, or falsely purporting to be an informe, report, record, confirmation, or other proceeding on application for a grant, concession, or denouncement under Mexican authority, during its existence in California, of lands, mines, or minerals, shall be punishable as prescribed in the preceding section.

Sec. 2, act of May 18, 1858, 11 U. S. Stat. 241.

**§ c. 2473. Penalty for prosecuting fraudulent suits, etc., in California.**

Every person who, for the purpose of setting up or establishing any claim against the United States to lands, mines, or minerals within the State of California, presents, or causes or procures to be presented, before any court, judge, commission, or commissioner, or other officer of the United States, any false, forged, altered, or counterfeited petition, certificate, order, report, decree, concession, denouncement, deed, patent, diseño, map, expediente or part of an expediente, title-paper, or written evidence of right, title, or claim to lands, minerals, or mines in the State of California, knowing the same to be false, forged, altered, or counterfeited, or any falsely dated petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, diseño, map, expediente or part of an expediente, title-paper, or written evidence of right, title, or claim to lands, mines, or minerals in California, knowing the same to be falsely dated; and every person who prosecutes in any court of the United States, by appeal or otherwise, any claim against the United States for lands, mines, or minerals in California, which claim is founded upon, or evidenced by,

any petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, diseño, map, expediente or part of an expediente, title-paper, or written evidence of right, title, or claim, which has been forged, altered, counterfeited, or falsely dated, knowing the same to be forged, altered, counterfeited, or falsely dated, shall be punishable as prescribed in section twenty-four hundred and seventy-one.

Sec. 3, act of May 18, 1858, 11 U. S. Stat. 291.

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#### AMENDMENT.

The following is an Act of Congress approved February 11, 1875 :

AN ACT to amend section two thousand three hundred and twenty-four of the revised statutes, relating to the development of the mining resources of the United States.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section two thousand three hundred and twenty-four of the revised statutes be, and the same is hereby, amended so that where a person or company has or may run a tunnel for the purposes of developing a lode or lodes, owned by said person or company, the money so expended in said tunnel shall be taken and considered as expended on said lode or lodes, whether located prior to or since the passage of said act; and such person or company shall not be required to perform work on the surface of said lode or lodes in order to hold the same as required by said act.

By this legislation the requirements of section 2324 Revised Statutes [5th section of the Mining Act of May 10, 1872] in regard to the expenditure upon mining claims, are so modified that money which has been or may be expended in running a tunnel for the purpose of developing one or more lodes owned by such person or company, shall be considered as expended upon such lodes.

The expenditures required upon mining claims may be made from the surface or in running a tunnel for the development of such claims.

S. S. BURDETT, *Commissioner.*

## REPEALING PROVISION.

**Sec. 5596. Repealing certain acts passed prior to December 1st, 1873.**

All acts of Congress passed prior to said first day of December, one thousand eight hundred and seventy-three, any portion of which is embraced in any section of said revision, are hereby repealed, and the section applicable thereto shall be in force in lieu thereof; all parts of such acts not contained in such revision, having been repealed or superseded by subsequent acts, or not being general or permanent in their nature: *Provided*, That the incorporation into said revision of any general and permanent provision, taken from an act making appropriations, or from an act containing other provisions of a private local, or temporary character, shall not repeal, or in any way effect any appropriation, or any provision of a private, local or temporary character, contained in any of said acts; but the same shall remain in force; and all acts of Congress passed prior to said last named day, no part of which are embraced in said revision, shall not be affected or changed by its enactment.—[Approved June 22, 1874.

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## INSTRUCTIONS AND REGULATIONS

UNDER THE

## MINING STATUTES OF THE UNITED STATES

ISSUED BY THE GENERAL LAND-OFFICE.

## MINERAL LANDS OPEN TO EXPLORATION, OCCUPATION, AND PURCHASE.

1. It will be perceived that the first section of said act, [of May, 1872,] leaves the mineral lands in the public domain, surveyed or unsurveyed, open to exploration, occupation, and purchase by all citizens of the United States, and all those who have declared their intention to become such.—[See § 2319, Rev. Stat.]

## STATUS OF LODGE-CLAIMS PREVIOUSLY LOCATED.

2. By an examination of the several sections of the foregoing act, it will be seen that the *status* of lode-claims located *precious* to the date thereof is not changed with regard to their *extent along the lode or width of surface*, such claims being restricted and governed both as to their *lateral and linear* extent by the State, territorial, or local laws, customs, or regulations which were in force in the respective districts at the date of such locations, in so far as the same did not conflict with the limitations fixed by the mining statute of July 26, 1866.—(14 Stat. 251.)—[See § 2322, Rev. Stat.]

3. Mining rights acquired under such previous locations, are, however, enlarged by said act of May 10, 1872, in the following respect, viz: The locators of all such previously taken veins or lodes, their heirs and assigns, so long as they comply with the laws of Congress and with State, territorial, or local regulations not in conflict therewith, governing mining-claims, are invested by said act with the exclusive possessory right of all the surface included within the lines of their locations, and of all veins, lodes, or ledges throughout their entire depth, the top or apex of which lies inside of such surface-lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side-lines of such locations at the surface, it being expressly provided, however, that the right of possession to such outside parts of said veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as aforesaid, through the end-lines of their locations so continued in their own direction that such planes will intersect such exterior parts of such veins, lodes, or ledges; no right being granted, however, to the claimant of such outside portion of a vein or ledge to enter upon the surface location of another claimant.—[See § 2322, Rev. Stat.]

4. It is to be distinctly understood, however, that the law limits the possessory right to veins, lodes, or ledges *other* than the one named in the original location, to such as were not *adversely claimed at the date of said act of May 10, 1872*, and that where such other vein or ledge was so adversely claimed at that date, the right of the party so adversely claiming is in no way impaired by said act.—[See § 2320, Rev. Stat.]

5. From and after the date of said act of Congress [of May, 1872,] in order to hold the possessory title to a mining-claim *previously located*, and for which a patent has not been issued, the law requires that *ten dollars* shall be expended annually in labor or improvements on each claim of *one hundred feet* on the course of the vein or lode until a patent shall have been issued therefor; but where a number of such claims are held in common upon the same vein or lode, the aggregate expenditure that would be necessary to hold all the claims, at the rate of ten dollars per hundred feet, may be made upon any one claim; a failure to comply with this requirement in any one year subjecting the claim upon which such failure occurred to relocation by other parties, the same as if no previous location thereof had ever been made, unless the claimants under the original location shall have resumed work thereon after such failure and before such relocation.—[See § 2324, Rev. Stat.]

6. Upon the failure of any one of several co-owners of a vein, lode, or ledge, which has not been patented, to contribute his proportion of the expenditures necessary to hold the claim or claims so held in ownership in common, the co-owners who have performed the labor, or made the improvements as required by said act, may, at the expiration of the year, give such delinquent co-owner personal notice in writing, or notice by publication in the newspaper published nearest the claim, for at least once a week for ninety days; and if, upon the expiration of ninety days after such notice in writing, or upon the expiration of one hundred and eighty days after the first newspaper publication of notice, the delinquent co-owner shall have failed to contribute his proportion to meet such expenditure or improvements, his interest in the claim by law passes to his co-owners who have made the expenditures or improvements as aforesaid.—[See § 2324, Rev. Stat.]

#### PATENTS FOR VEINS OR LODES HERETOFORE ISSUED.

7. Rights under patents for veins or lodes heretofore granted under previous legislation of Congress, are enlarged by this act, so as to invest the patentee, his heirs or assigns, with title to all veins, lodes, or ledges throughout their entire depth, the top or apex of which lies within the end and side boundary lines of his claim on the surface, as patented, extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side-lines of the claim at the surface. The right of possession to such outside parts of such veins or ledges to be confined to such portions thereof as lie between vertical planes drawn downward through the end-lines of the claim at the surface, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges, it being expressly provided, however, that all veins, lodes, or ledges, the top or apex of which lies inside such surface locations, other than the one named in the patent, which were *adversely claimed* at the date of said act, are excluded from such conveyance by patent.—[See § 2322, Rev. Stat.]

8. Applications for patents for mining-claims pending at the date of the act of May 10, 1872, may be prosecuted to final decision in the General Land-Office, and where no adverse rights are affected thereby, patents will be issued, in pursuance of the provisions of said act.

#### MANNER OF LOCATING CLAIMS ON VEINS OR LODES.

9. From and after the date of said act, any person who is a citizen of the United States, or who has declared his intention to become a citizen, may locate, record, and hold a mining-claim of *fifteen hundred linear feet* along the course of any mineral vein or lode subject to location; or an association of persons, severally qualified as above, may make joint location of such claim of *fifteen hundred feet*, but in no event can a location of a vein or lode made subsequent to the act exceed fifteen hundred feet along the course thereof, whatever may be the number of persons composing the association.—[See §§ 2319, 2320, Rev. Stat.]

10. With regard to the extent of surface-ground adjoining a vein or lode, and claimed for the the convenient working thereof, the act provides that the lateral extent of locations of veins or lodes made after its passage shall in no case exceed *three hundred feet on each side of the middle of the vein at the surface*, and that no such surface rights shall be limited by any mining regulations to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing at the date of said act may render such limitation necessary, the end-lines of such claims to be in all cases parallel to each other.—[See §§ 2320, 2322, Rev. Stat.

11. By the foregoing it will be perceived that no lode-claim located after the date of said act can exceed a parallelogram fifteen hundred feet in length by six hundred feet in width, but whether surface-ground of that width can be taken, depends upon the local regulations or State or territorial laws in force in the several mining-districts; and that no such local regulations or state or territorial laws shall limit a vein or lode claim to less than fifteen hundred feet along the course thereof, whether the location is made by one or more persons, nor can surface rights be limited to less than fifty feet in width, unless adverse claims existing on the 10th day of May, 1872, render such lateral limitation necessary.—[See §§ 2320, 2322, Rev. Stat.

12. It is provided in said act that the miners of each district may make rules and regulations not in conflict with the laws of the United States, or of the State or territory in which such districts are respectively situated, governing the location, manner of recording, and amount of work necessary to hold possession of a claim. It likewise requires that the location must be so distinctly marked on the ground that its boundaries may be readily traced. This is a very important matter, and locators cannot exercise too much care in defining their locations at the outset, inasmuch as the law requires that all records of mining locations made subsequent to its passage, shall contain the name or names of the locators, the date of the location, and such a *description of the claim or claims* located, by reference to some natural object or permanent monument, as will identify the claim.—[See § 2324, Rev. Stat.

13. The said act requires that no lode-claim can be recorded until after the discovery of a vein or lode within the limits of the ground claimed; the object of which provision is evidently to prevent the encumbering of the district mining records with useless locations before sufficient work has been done thereon to determine whether a vein or lode has really been discovered or not.—[See § 2320, Rev. Stat.

14. The claimant should therefore, prior to recording his claim, unless the vein can be traced upon the surface, sink a shaft, or run a tunnel or drift to a sufficient depth therein to discover and develop a mineral-bearing vein, lode, or crevice; should determine, if possible, the general course of such vein in either direction from the point of discovery, by which direction he will be governed in marking the boundaries of his claim on the surface, and should give the course and distance as nearly as practicable from the discovery-shaft on the claim, to some permanent, well-known points or objects, such, for instance, as stone monuments, blazed trees, the confluence of streams, point of intersection of well-known gulches, ravines, or roads, prominent buttes, hills, &c., which may be in the immediate vicinity, and which will serve to perpetuate and fix the *locus* of the claim and render it susceptible of identification from the description thereof given in the record of locations in the district.—[See § 2324, Rev. Stat.

15. In addition to the foregoing data, the claimant should state the names of adjoining claims, or if none adjoin, the relative positions of the nearest claims; should drive a post or erect a monument of stones at each corner of his surface-ground, and at the point of discovery or discovery shaft, should fix a post, stake, or board, upon which should be designated the name of the lode, the name or names of the locators, the number of feet claimed, and in which direction from the point of discovery; it being essential that the location notice filed for record, in addition to

the foregoing description, should state whether the entire claim of fifteen hundred feet is taken on one side of the point of discovery, or whether it is partly upon one and partly upon the other side thereof, and in the latter case, how many feet are claimed upon each side of such discovery-point.—[See § 2324, Rev. Stat.

16. Within a reasonable time, say twenty days after the location shall have been marked on the ground, notice thereof, accurately describing the claim in manner aforesaid, should be filed for record with the proper recorder of the district, who will thereupon issue the usual certificate of location.

17. In order to hold the possessory right to a claim of fifteen hundred feet of a vein or lode located as aforesaid, the act requires that until a patent shall have been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made thereon during each year, in default of which the claim will be subject to relocation by any other party having the necessary qualifications, unless the original locator, his heirs, assigns, or legal representatives, have resumed work thereon after such failure and before such relocation.—[See § 2324, Rev. Stat.

18. The importance of attending to these details in the matter of location, labor, and expenditure will be the more readily perceived when it is understood that a failure to give the subject proper attention, may invalidate the claim.

#### TUNNEL RIGHTS.

19. The fourth section of the act [of May, 1872.] provides that where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid, but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins or lodes on the line of said tunnel.—[See § 2323, Rev. Stat.

20. The effect of this section is simply to give the proprietors of a mining tunnel run in good faith the possessory right to fifteen hundred feet of any blind lodes cut, discovered, or intersected by such tunnel, which were not previously known to exist, within three thousand feet from the face or point of commencement of such tunnel, and to prohibit other parties, after the commencement of the tunnel, from prospecting for and making locations of lodes on the *line thereof* and within said distance of three thousand feet, unless such lodes appear upon the surface or were previously known to exist.—[See § 2323, Rev. Stat.

21. The term "face," as used in said section, [4th Sec. of act of May, 1872.] is construed and held to mean the first working face formed in the tunnel, and to signify the point at which the tunnel actually enters cover, it being from this point that the three thousand feet are to be counted, upon which prospecting is prohibited as aforesaid.—[See § 2323, Rev. Stat.

22. To avail themselves of the benefits of this provision of law, the proprietors of a mining tunnel will be required, at the time they enter cover as aforesaid, to give proper notice of their tunnel location, by erecting a substantial post, board, or monument, at the face or point of commencement thereof, upon which should be posted a good and sufficient notice, giving the names of the parties or company claiming the tunnel right; the actual or proposed course or direction of the tunnel; the height and width thereof, and the course and distance from such face or point of commencement to some permanent well known objects in the vicinity by which to fix and determine the *locus* in manner heretofore set forth applicable to locations of veins or lodes, and at the time of posting such notice they shall, in order that miners or

prospectors may be enabled to determine whether or not they are within the lines of the tunnel, establish the boundary lines thereof by stakes or monuments placed along such lines at proper intervals, to the terminus of the three thousand feet from the face or point of commencement of the tunnel, and the lines so marked will define and govern as to the specific boundaries within which prospecting for lodes not previously known to exist is prohibited while work on the tunnel is being prosecuted with reasonable diligence.—[See § 2323, Rev. Stat.]

23. At the time of posting notice and marking out the lines of the tunnel as aforesaid, a full and correct copy of such notice of location defining the tunnel claim must be filed for record with the mining recorder of the district, to which notice must be attached the sworn statement or declaration of the owners, claimants, or projectors of such tunnel, setting forth the facts in the case; stating the amount expended by themselves and their predecessors in interest in prosecuting work thereon; the extent of the work performed, and that it is *bona fide* their intention to prosecute work on the tunnel so located and described with reasonable diligence for the development of a vein or lode, or for the discovery of mines, or both, as the case may be.

24. This notice of location must be duly recorded, and, with the said sworn statement attached, kept on the recorder's files for future reference.

25. By a compliance with the foregoing, much needless difficulty will be avoided, and the way for the adjustment of legal rights acquired in virtue of said fourth section of the act [of May, 1872,] will be made much more easy and certain.—[See § 2323, Rev. Stat.]

26. This office will take particular care that no improper advantage is taken of this provision of law by parties making or professing to make tunnel locations, ostensibly for the purposes named in the statute, but really for the purpose of monopolizing the lands lying in front of their tunnels to the detriment of the mining interests and to the exclusion of *bona fide* prospectors or miners; but will hold such tunnel claimants to a strict compliance with the terms of the act; and as *reasonable diligence* on their part in prosecuting the work is one of the essential conditions of their implied contract, negligence or want of due diligence will be construed as working a forfeiture of their right to all undiscovered veins on the line of such tunnel.—[See § 2323, Rev. Stat.]

#### MANNER OF PROCEEDING TO OBTAIN GOVERNMENT TITLE TO VEIN OR LODE CLAIMS.

27. By the sixth section of said act, [of May, 1872,] authority is given for granting title for mines by patent from the Government, to any person, association, or corporation having the necessary qualifications as to citizenship and holding the right of possession to a claim in compliance with law.—[See § 2325, Rev. Stat.]

28. The claimant is required in the first place to have a correct survey of his claim made under authority of the surveyor-general of the State or territory in which the claim lies; such survey to show with accuracy the exterior surface boundaries of the claim, which boundaries are required to be distinctly marked by monuments on the ground.—[See § 2325, Rev. Stat.]

29. The claimant is then required to post a copy of the plat of such survey in a conspicuous place upon the claim, together with notice of his intention to apply for a patent therefor, which notice will give the date of posting, the name of the claimant, the name of the claim, mine, or lode; the mining district and county; whether the location is of record, and if so, where the record may be found; the number of feet claimed along the vein and the presumed direction thereof; the number of feet claimed on the lode in each direction from the point of discovery, or other well-defined place on the claim; the name or names of adjoining claimants on the same or other lodes; or if none adjoin, the names of the nearest claims, &c.—[See § 2325, Rev. Stat.]

30. After posting the said plat and notice upon the premises, the claimant will file with the proper register and receive a copy of such plat, and the field-notes of survey of the claim, accompanied by the affidavit of at least two credible witnesses that such plat and notice are posted conspicuously upon the claim, giving the date and place of such posting: a copy of the notice so posted to be attached to, and form a part of, said affidavit.—[See § 2325, Rev. Stat.

31. Attached to the field-notes so filed must be the sworn statement of the claimant that he has the possessory right to the premises therein described, in virtue of a compliance by himself (and by his grantors, if he claims by purchase) with the mining rules, regulations, and customs of the mining district, State, or territory in which the claim lies, and with the mining laws of Congress; such sworn statement to narrate briefly, but as clearly as possible, the facts constituting such compliance, the origin of his possession, and the basis of his claim to a patent.—[See § 2325, Rev. Stat.

32. This affidavit should be supported by appropriate evidence from the mining recorder's office as to his possessory right, as follows, viz: Where he claims to be a locator, a full, true, and correct copy of such location should be furnished, as the same appears upon the mining records; such copy to be attested by the seal of the recorder, or if he has no seal, then he should make oath to the same being correct, as shown by his records; where the applicant claims as a locator in company with others, who have since conveyed their interests in the lode to him, a copy of the original record of location should be filed, together with an abstract of title from the proper recorder, under seal or oath as aforesaid, tracing the colocator's possessory rights in the claim to such applicant for patent; where the applicant claims only as a purchaser for valuable consideration, a copy of the location record must be filed, under seal or upon oath as aforesaid, with an abstract of title certified as above by the proper recorder, tracing the right of possession by a continuous chain of conveyances from the original locators to the applicant.

33. In the event of the mining records in any case having been destroyed by fire or otherwise lost, affidavit of the fact should be made, and secondary evidence of possessory title will be received, which may consist of the affidavit of the claimant, supported by those of any other parties cognizant of the facts relative to his location, occupancy, possession, improvements, &c.; and in such case of lost records, any deeds, certificates of location or purchase, or other evidence which may be in the claimant's possession, and tend to establish his claim, should be filed.

34. Upon the receipt of these papers the register will, at the expense of the claimant, publish a notice of such application for the period of sixty days, in a newspaper published nearest to the claim, and will post a copy of such notice in his office for the same period.—[See § 2325, Rev. Stat.

35. The notices so published and posted must be as full and complete as possible, and embrace all the *data* given in the notice posted upon the claim.

36. Too much care cannot be exercised in the preparation of these notices, inasmuch as upon their accuracy and completeness will depend, in a great measure, the regularity and validity of the whole proceeding.

37. The claimant, either at the time of filing these papers with the register, or at any time during the sixty days' publication, is required to file a certificate of the surveyor-general that not less than five hundred dollars' worth of labor has been expended or improvements made upon the claim by the applicant or his grantors; that the plat filed by the claimant is correct; that the field-notes of the survey, as filed, furnish such an accurate description of the claim as will, if incorporated into a patent, serve to fully identify the premises, and that such reference is made therein to natural objects or permanent monuments as will perpetuate and fix the *locus* thereof.—[See § 2325, Rev. Stat.

38. It will be the more convenient way to have this certificate indorsed by the surveyor-general, both upon the plat and field-notes of survey filed by the claimant as aforesaid.

39. After the sixty days' period of newspaper publication has expired, the claimant will file his affidavit, showing that the plat and notice aforesaid remained conspicuously posted upon the claim sought to be patented during said sixty days' publication.—[See § 2325, Rev. Stat.]

40. Upon the filing of this affidavit the register will, if no adverse claim was filed in his office during the period of publication, permit the claimant to pay for the land according to the area given in the plat and field-notes of survey aforesaid, at the rate of five dollars for each acre and five dollars for each fractional part of an acre, the receiver issuing the usual duplicate receipt therefor; after which the whole matter will be forwarded to the Commissioner of the General Land-Office and a patent issued thereon if found regular.—[See § 2325, Rev. Stat.]

41. In sending up the papers in the case the register must not omit certifying to the fact that the notice was posted in his office for the full period of sixty days, such certificate to state distinctly when such posting was done and how long continued.

42. The consecutive series of numbers of mineral entries must be continued, whether the same are of lode or placer claims.

43. The surveyor-general must continue to designate all surveyed mineral claims as heretofore by a progressive series of numbers, beginning with lot No. 37 in each township; the claim to be so designated at date of filing the plat, field-notes, &c., in addition to the local designation of the claim; it being required in all cases that the plat and field-notes of the survey of a claim must, in addition to the reference to permanent objects in the neighborhood, describe the *locus* of the claim with reference to the lines of public surveys by a line connecting a corner of the claim with the nearest public corner of the United States surveys, unless such claim be on un-surveyed lands at a remote distance from such public corner; in which latter case the reference by course and distance to permanent objects in the neighborhood will be a sufficient designation by which to fix the *locus* until the public surveys shall have been closed upon its boundaries.

#### ADVERSE CLAIMS.

44. The seventh section of the act [of May, 1872.] provides for adverse claims; fixes the time within which they shall be filed to have legal effect, and prescribes the manner of their adjustment.—[See § 2326, Rev. Stat.]

45. Said section requires that the adverse claim shall be filed during the period of publication of notice; that it must be on the oath of the adverse claimant; and that it must show the "nature," the "boundaries," and the "extent" of the adverse claim.—[See § 2326, Rev. Stat.]

46. In order that this section of law may be properly carried into effect, the following is communicated for the information of all concerned:

47. An adverse mining claim must be filed with the register of the same land-office with whom the application for patent was filed, or in his absence with the receiver, and within the sixty days' period of newspaper publication of notice.—[See § 2326, Rev. Stat.]

48. The adverse notice must be duly sworn to before an officer authorized to administer oaths within the land-district, or before the register or receiver; it will fully set forth the nature and extent of the interference or conflict; whether the adverse party claims as a purchaser for valuable consideration or as a locator; if the former, the original conveyance, or a duly certified copy thereof, should be furnished, or if the transaction was a mere verbal one he will narrate the circumstances attending the purchase, the date thereof, and the amount paid, which facts should be supported by the affidavit of one or more witnesses, if any were present at the time, and if he claims as a locator he must file a duly certified copy of the location from the office of the proper recorder.—[See §§ 2325, 2326, 2335, Rev. Stat.]

49. In order that the "boundaries" and "extent" of the claim may be shown, it will be incumbent upon the adverse claimant to file a plat showing his claim and its relative situation or position with the one against which he claims, so that the extent of the conflict may be the better understood. This plat must be made from an actual survey by a United States deputy surveyor, who will officially certify thereon to its correctness; and in addition there must be attached to such plat of survey a certificate or sworn statement by the surveyor as to the approximate value of the labor performed or improvements made upon the claim of the adverse party, and the plat must indicate the position of any shafts, tunnels, or other improvements, if any such exist upon the claim of the party opposing the application.—[See §§ 2325, 2326, Rev. Stat.

50. Upon the foregoing being filed within the sixty days as aforesaid, the register, or in his absence the receiver, will give notice in writing to *both parties* to the contest that such adverse claim has been filed, informing them that the party who filed the adverse claim will be required within thirty days from the date of such filing to commence proceedings in a court of competent jurisdiction, to determine the question of right of possession, and to prosecute the same with reasonable diligence to final judgment, and that should such adverse claimant fail to do so, his adverse claim will be considered waived, and the application for patent be allowed to proceed upon its merits.—[See § 2326, Rev. Stat.

51. When an adverse claim is filed as aforesaid, the register or receiver will indorse upon the same the precise date of filing, and preserve a record of the date of notifications issued thereon; and thereafter all proceedings on the application for patent will be suspended, with the exception of the completion of the publication and posting of notices and plat, and the filing of the necessary proof thereof, until the controversy shall have been adjudicated in court, or the adverse claim waived or withdrawn.—[See § 2326, Rev. Stat.

52. The proceedings after rendition of judgment by the court in such case are so clearly defined by the act itself as to render it unnecessary to enlarge thereon in this place.

#### PLACER CLAIMS.

53. The tenth section of the act under consideration, [of May, 1872,] provides "that the act entitled 'An act to amend an act granting the right of way to ditch and canal owners over the public lands, and for other purposes,' approved July 9, 1870, shall be and remain in full force, except as to the proceedings to obtain a patent, which shall be similar to the proceedings prescribed by sections six and seven of this act, [Secs. 2325, 2326 Rev. Stat.] for obtaining patents for vein or lode claims, but where said placer-claims shall be upon surveyed lands and conform to legal subdivisions, no further survey or plat shall be required, and all placer-mining claims hereafter located shall conform, as nearly as practicable, with the United States system of public-land surveys and the rectangular subdivisions of such surveys, and no such locations shall include more than twenty acres for each individual claimant; but where placer-claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands," &c.—[See § 2350, Rev. Stat.

54. The proceedings for obtaining patents for veins or lodes having already been fully given, it will not be necessary to repeat them here; it being thought that careful attention thereto by applicants and the local officers will enable them to act understandingly in the matter and make such slight modifications in the notice, or otherwise, as may be necessary in view of the different nature of the two classes of claims, placer-claims being fixed, however, at two dollars and fifty cents per acre, or fractional part of an acre.—[See § 2333, Rev. Stat.

55. The twelfth section of the act of July ninth, eighteen hundred and seventy, will be found as a note to Sec. 2330, p. 17; and the thirteenth section of same act, as note to Sec. 2332, p. 19.



56. It will be observed that that portion of the first proviso to said twelfth section which requires placer-claims upon surveyed lands to conform to legal subdivisions, is repealed by the present statute [act of May, 1872] with regard to claims heretofore located, but that where such claims are located previous to such survey and *do not* conform to legal subdivisions, survey, plat, and entry thereof may be made according to the boundaries fixed by local rules, but that where such rules *do* conform to legal subdivisions, the entry may be effected according to such legal subdivisions without the necessity of further survey or plat.—[See §§ 2329, 2330, 2331, 2332, Rev. Stat.]

57. In the second proviso to said twelfth section authority is given for the subdivision of forty-acre legal subdivisions into *ten-acre* lots, which is intended for the greater convenience of miners in segregating their claims both from one another and from intervening agricultural land.—[See § 2330, Rev. Stat.]

58. It is held, therefore, that under a proper construction of the law these ten-acre lots in mining-districts should be considered and dealt with, to all intents and purposes, as legal subdivisions, and that an applicant having a legal claim which conforms to one or more of these ten-acre lots, either adjoining or cornering, may make entry thereof, after the usual proceedings, without further survey or plat.—[See § 2330, Rev. Stat.]

59. In cases of this kind, however, the notice given of the application must be very specific and accurate in description, and as the forty-acre tracts may be subdivided into ten-acre lots, either in the form of squares of ten-by-ten chains, or of parallelograms five-by-twenty chains, so long as the lines are parallel and at right angles with the lines of the public surveys, it will be necessary that the notice and application state specifically what ten-acre lots are sought to be patented, in addition to the other *data* required in the notice.—[See § 2331, Rev. Stat.]

60. Where the ten-acre subdivision is in the form of a square it may be described, for instance, as the "S. E.  $\frac{1}{4}$  of the S. W.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$ ," or, if in the form of a parallelogram as aforesaid, it may be described as the W.  $\frac{1}{2}$  of the W.  $\frac{1}{2}$  of the S. W.  $\frac{1}{4}$  of the N. W.  $\frac{1}{4}$  (or the N.  $\frac{1}{2}$  of the S.  $\frac{1}{2}$  of the N. E.  $\frac{1}{4}$  of the S. E.  $\frac{1}{4}$ ) of section —, township —, range —," as the case may be; but, in addition to this description of the land, the notice must give all the other *data* that is required in a mineral application, by which parties may be put on inquiry as to the premises sought to be patented.

61. The proceedings necessary for the adjustment of rights where a known vein or lode is embraced by a placer-claim, are so clearly defined in the eleventh section of the act, [of May, 1872] as to render any particular instructions upon that point at this time unnecessary.—[See § 2333, Rev. Stat.]

62. When an adverse claim is filed to a placer application, the proceedings are the same as in the case of vein or lode claims, already described.

#### QUANTITY OF PLACER GROUND SUBJECT TO LOCATION.

63. By the twelfth section of the said amendatory act of July 9, 1870, (third proviso,) it is declared "that no location of a placer-claim hereafter made shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys," &c.—[See § 2330 and note, Rev. Stat.]

64. The tenth section of the act of May 10, 1872, provides that "all placer-mining claims hereafter located shall conform as near as practicable with the United States system of public-land surveys, and the rectangular subdivisions of such surveys, and no such locations shall include more than twenty acres for each individual claimant." [See § 2331 and note, Rev. Stat.]

65. The foregoing provisions of law are construed to mean that after the 9th day of July, 1870, no location of a placer-claim can be made to exceed one hundred and sixty acres, whatever may be the number of locators associated together, or whatever the local regulations of the district may allow; and that from and after the passage

of said act of May 10, 1872, no location made by an individual can exceed twenty acres, and no location made by an association of individuals can exceed one hundred and sixty acres, [Secs. 2330, 2331 Rev. Stat.] which location of one hundred and sixty acres cannot be made by a less number than eight *bona fide* locators, but that whether as *much* as twenty acres can be located by an individual, or one hundred and sixty acres by an association, depends entirely upon the mining regulations in force in the respective districts at the date of location; it being held that such mining regulations are in no way enlarged by said acts of Congress, but remain intact and in full force with regard to the *size* of locations, in so far as they do not permit locations in excess of the limits fixed by Congress, but that where such regulations permit locations in excess of the maximums fixed by Congress as aforesaid, they are restricted accordingly.—[See § 2331, Rev. Stat.]

66. The regulations hereinbefore given, [see 14 and 15,] as to the manner of marking locations on the ground, and placing the same on record, must be observed in the case of placer locations, so far as the same are applicable; the law requiring, however, that where placer-claims are upon *surveyed* public lands, the locations must hereafter be made to conform to legal subdivisions thereof.—[See § 2331, Rev. Stat.]

67. With regard to the proofs necessary to establish the possessory right to a placer-claim, the said thirteenth section of the act of July 9, 1870, provides that "where said person or association, they and their grantors, shall have held and worked their said claims for a period equal to the time prescribed by the statute of limitations for mining claims for the State or territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this act in the absence of any adverse claim."—[See § 2332 and note, Rev. Stat.]

68. This provision of law will greatly lessen the burden of proof, more especially in the case of old claims located many years since, the records of which, in many cases, have been destroyed by fire, or lost in other ways during the lapse of time, but concerning the possessory right to which all controversy or litigation has long been settled.

69. When an applicant desires to make his proof of possessory right in accordance with this provision of law, you will not require him to produce evidence of location, copies of conveyances, or abstracts of title, as in other cases, but will require him to furnish a duly certified copy of the statute of limitations of mining-claims for the State or territory, together with his sworn statement giving a clear and succinct narration of the facts as to the origin of his title, and likewise as to the continuation of his possession of the mining ground covered by his application; the area thereof, the nature and extent of the mining that has been done thereon; whether there has been any opposition to his possession or litigation with regard to his claim; and if so, when the same ceased; whether such cessation was caused by compromise or by judicial decree, and any additional facts within the claimant's knowledge having a direct bearing upon his possession and *bona fides* which he may desire to submit in support of his claim.

70. There should likewise be filed a certificate under seal of the court having jurisdiction of mining cases within the judicial district embracing the claim, that no suit or action of any character whatever, involving the right of possession to any portion of the claim applied for is pending, and that there has been no litigation before said court affecting the title to said claim or any part thereof for a period equal to the time fixed by the statute of limitations for mining claims in the State or territory as aforesaid, other than that which has been finally decided in favor of the claimant.

71. The claimant should support his narrative of facts relative to his possession, occupancy, and improvements by corroborative testimony of any disinterested person or persons of credibility who may be cognizant of the facts in the case and are capable of testifying understandingly in the premises.

72. It will be to the advantage of claimants to make their proofs as full and complete as practicable.

APPOINTMENT OF DEPUTY SURVEYORS—CHARGES FOR SURVEYS AND PUBLICATIONS—FEES OF REGISTERS AND RECEIVERS, &C.

73. The twelfth section of the said act of May 10, 1872, provides for the appointment of surveyors of mineral claims, authorizes the Commissioner of the General Land-Office to establish the rates to be charged for surveys and for newspaper publications, prescribes the fees allowed to the local officers for receiving and acting upon applications for mining patents and for adverse claims thereto, &c.—[See § 2334 Rev. Stat.

74. The surveyors general of the several districts, will, in pursuance of said law, appoint in each land district as many competent deputies for the survey of mining claims as may seek such appointment; it being distinctly understood that all expenses of these notices and surveys are to be borne by the mining claimants and not by the United States; the system of making *deposits* for mineral surveys, as required by previous instructions, being hereby revoked as regards *field-work*; the claimant having the option of employing *any* deputy surveyor within such district to do his work in the field.—[See § 2334 Rev. Stat.

75. With regard to the *plating* of the claim and other *office-work* in the surveyor-general's office, that officer will make an estimate of the cost thereof, which amount the claimant will deposit with any assistant United States treasurer, or designated depository, in favor of the United States Treasurer, to be passed to the credit of the fund created by "individual depositors for surveys of the public lands," and file with the surveyor general duplicate certificates of such deposit, in the usual manner.

76. The surveyors general will endeavor to appoint mineral deputy surveyors, as rapidly as possible, so that one or more may be located in each mining district for the greater convenience of miners.

77. The usual oaths will be required of these deputies and their assistants as to the correctness of each survey executed by them.

78. The law requires that each applicant shall file with the register and receiver a sworn statement of all charges and fees paid by him for publication of notice and for survey; together with all fees and money paid the register and receiver, which sworn statement is required to be transmitted to this office, for the information of the Commissioner.—[See § 2334, Rev. Stat.

79. Should it appear that excessive or exorbitant charges have been made by any surveyor or any publisher, prompt action will be taken with the view of correcting the abuse.

80. The fees payable to the register and receiver, for filing and acting upon applications for mineral-land patents, made under said act of May 10, 1872, are five dollars to each officer, to be paid by the applicant for patent at the time of filing, and the like sum of five dollars is payable to each officer by an adverse claimant at the time of filing his adverse claim.—[See § 2238, Rev. Stat.

81. All fees or charges under this act, or the acts of which it is amendatory, may be paid in United States currency.

82. The register and receiver will, at the close of each month, forward to this office an abstract of mining applications filed, and a register of receipts, accompanied with an abstract of mineral lands sold.

83. The fees and purchase-money received by registers and receivers must be placed to the credit of the United States in the receiver's monthly and quarterly account, charging up in the disbur-ing account the sums to which the register and receiver may be respectively entitled as fees and commissions, with limitations in regard to the legal maximum.

84. The thirteenth section of the said act of May 10, 1872, provides that all affidavits required under said act, or the act of which it is amendatory, may be verified before *any* officer authorized to administer oaths within the land district where the

claims may be situated, in which case they will have the same force and effect as if taken before the register or receiver, and that in cases of contest as to the mineral or agricultural character of land, the testimony and proofs may be taken before any such officer on personal notice of at least ten days to the opposing party, or if said party cannot be found, then, after publication of notice for at least once a week for thirty days, in a newspaper, to be designated by the register as published nearest to the location of such land, proof of which notice must be made to the register.—[See § 2335, Rev. Stat.

85. The instructions heretofore issued with regard to disproving the mineral character of lands are accordingly modified as to allow proof upon *that point* to be taken before *any* officer authorized to administer oaths within the land district, and that where the residence of the parties who claim the land to be mineral is known, such evidence may be taken without publication, ten days after the mineral claimants or affiants shall have been personally notified of the time and place of such hearing; but in cases where such affiants or claimants cannot be served with personal notice, or where the land applied for is returned as mineral upon the township plat, or where the same is now or may hereafter be suspended for non-mineral proof, by order of this office, then the party who claims the right to enter the land as agricultural will be required, at his own expense, to publish a notice once each week for five consecutive weeks in the newspaper of largest circulation published in the county within which said land is situated, or if no newspaper is published within such county, then in a newspaper published in an adjoining county; the newspaper in either case to be designated by the register; which notice must be clear and specific, embracing the points required in notices under instructions from this office of March 20, 1872, and must name a day after the last day of publication of such notice, when testimony as to the character of the land will be taken, stating before what magistrate or other officer such hearing will be had, and the place of such hearing.—[See § 2335 Rev. Stat.

#### MILL-SITES.

86. The fifteenth section of said act provides, "That where non-mineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such non-adjacent surface-ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable under this act to veins or lodes: *Provided*, That no location hereafter made of such non-adjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this act for the superficies of the lode. The owner of a quartz-mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his mill-site as provided in this section."—[See § 2337 Rev. Stat.

87. To avail themselves of this provision of law, parties holding the possessory right to a vein or lode, and to a piece of land not contiguous thereto, for mining or milling purposes, not exceeding the quantity allowed for such purpose by the local rules, regulations, or customs, the proprietors of such vein or lode may file in the proper land-office their application for a patent, under oath, in manner already set forth herein, [Subs. 27-43] which application, together with the plat and field-notes, may include, embrace, and describe in addition to the vein or lode, such non-contiguous mill-site, and after due proceedings as to notice, &c., a patent will be issued conveying the same as one claim.—[Sec. 2325, Rev. Stat.

88. In making the survey in a case of this kind, the lode-claim should be described in the plat and field-notes as "Lot No. 37, A," and the mill-site as "Lot No. 37, B," or whatever may be its appropriate numerical designation; the course and distance from a corner of the mill-site to a corner of the lode-claim to be invariably given in such plat and field-notes, and a copy of the plat and notice of application for patent

must be conspicuously posted upon the mill-site as well as upon the vein or lode for the statutory period of sixty days. In making the entry no separate receipt or certificate need be issued for the mill-site, but the whole area of both lode and mill-site will be embraced in one entry, the price being five dollars for each acre and fractional part of an acre embraced by such lode and mill-site claim.

89. In case the owner of a quartz-mill or reduction works is not the owner or claimant of a vein or lode, the law permits him to make application therefor in the same manner prescribed herein for mining-claims, and after due notice and proceedings, in the absence of a valid adverse filing, to enter and receive a patent for his mill-site, at said price per acre.—[See § 2337 Rev. Stat.]

90. In every case there must be satisfactory proof that the land claimed as a mill-site is not mineral in character, which proof may, where the matter is unquestioned, consist of the sworn statement of the claimant, supported by that of one or more disinterested persons capable from acquaintance with the land to testify understandingly.

91. The law expressly limits mill-site locations made from and after its passage to *five acres*, but whether so *much* as that can be located depends upon the local customs, rules, or regulations.—[See § 2337 Rev. Stat.]

92. The registers and receivers will preserve an unbroken consecutive series of numbers for all mineral entries.

#### PROOF OF CITIZENSHIP OF MINING CLAIMANTS.

93. The proof necessary to establish the citizenship of applicants for mining patents, whether under the present or past enactments, it will be seen by reference to the seventh section of the act under consideration [of May, 1872] may consist, in the case of an individual claimant, of his own affidavit of the fact; in the case of an association of persons *not* incorporated, of the affidavit of their authorized agent, made on his own knowledge or upon information and belief, that the several members of such association are citizens; and in the case of an incorporated company, organized under the laws of the United States, or the laws of any State or territory of the United States, by the filing of a certified copy of their charter or certificate of incorporation.—[See § 2321 Rev. Stat.]

94. These affidavits of citizenship may be taken before the register or receiver, or any other officer authorized to administer oaths within the district.—[See § 2335 Rev. Stat.]

WILLIS DRUMMOND, *Commissioner*.

#### Expenditures and Improvements.

The following instructions were issued by the General Land Office, under dates of June 9, 1874, and March 11, 1875:—

The requirements of the fifth section of the mining act of May 10, 1872, [Sec. 2321, Rev. Stat.] and the amendatory act of March 1, 1873, are changed by extending the time for the first annual expenditure upon claims located *prior to May 10, 1872*, to the first day of January, 1875. The requirements in regard to expenditures upon claims located *since May 10, 1872*, are in no way changed by the above amendatory act.—[See § 2324, and notes pp. 11, 12.]

The requirements of section 2324 Revised Statutes [5th section of the Mining Act of May 10, 1872] in regard to the expenditure upon mining-claims, are so modified that money which has been or may be expended in running a tunnel for the purpose of developing one or more lodes owned by such person or company, shall be considered as expended upon such lodes. The expenditures required upon mining-claims may be made from the surface or in running a tunnel for the development of such claims.—[See amendment, p. 33.]

S. S. BURDET, *Commissioner*.

### Instructions Relative to Surveys.

The following supplemental instructions concerning surveys were issued by the General Land Office, November 29, 1873:—

Under all laws and regulations, whether local or general, the location of a claim in such a manner as to give notice to all the world of the nature and extent of the same is not only indispensable, but in most cases, mining claims are initiated thereby, and all subsequent proceedings are based upon and must conform to such location. A failure to make and record the location in accordance with the law and regulations in force at the date of the location will defeat the claim, and if it is not made with such definiteness as to operate as notice to all persons seeking to acquire rights to mining lands, it will be void for uncertainty.

It follows, therefore, that in making surveys of mining claims, it becomes essentially necessary to ascertain the boundaries thereof as established by the original location, for the rights of the claimant are limited and defined by such boundaries. To make a survey in accordance with other lines or boundaries, is tantamount to making a new location of the claim, and the rights of adjoining locators who have complied with the requirements of the law may be interfered with and defeated thereby. The practice of making surveys according to the dictation of parties in interest, instead of in accordance with the original location, has already caused great confusion and been productive of great injury to *bona fide* claimants.

You will, therefore, require the applicant for a survey to furnish a copy of the original record of location, properly certified to by the recorder having charge of the records of the mining locations in the district where the claim is situate, and cause all official surveys of mining claims to be made in strict conformity to the lines established by the original location as recorded; and if the records of locations made prior to the passage of the mining act of May 10, 1872, is not sufficiently definite and certain to enable the deputy to make a correct survey therefrom, he should, after reasonable notice in writing to be served personally, or through the United States mail, on the applicant for survey and adjoining claimants, whose residence or post-office address he may know, or can ascertain by the exercise of reasonable diligence, take the testimony of neighboring claimants, and other persons who are familiar with the boundaries thereof, as originally located and asserted by the locators of the claim, and after having ascertained by such testimony the boundaries as originally established, he should make a survey in accordance therewith, and transmit full and correct returns of survey, accompanied by the copy of the record of location, the testimony, and a copy of the notice served on the claimant and adjoining proprietors, certifying thereon, when, in what manner, and on whom, service was made.

The act of Congress of May 10, 1872, expressly provides that "the location must be distinctly marked on the ground, so that its boundaries can be readily traced," and "that all records of mining claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims, located by reference to some natural object or permanent monument, as will identify the claim."

These provisions of the law must be strictly complied with in each case to entitle the claimant to a survey and patent, and therefore should a claimant under a location made subsequent to the passage of the mining act of May 10, 1872, who has not complied with said requirements in regard to marking the location upon the ground and recording the same, apply for a survey, you will decline to make it.

The only relief for a party under such circumstances will be to make a new location in conformity to law and regulations, as no case will be approved and patented by this office unless these and all other provisions of law are substantially complied with. If the law has been complied with in the matter of marking the location on the ground and recording the same, and any question arises in the execution of the

survey as to the identity of monuments, marks, or boundaries, which cannot be determined by a reference to the record, the deputy should take testimony in the manner hereinbefore prescribed for surveys of claims located prior to May 10, 1872, and having thus ascertained the true and correct boundaries originally established, marked, and recorded, make the survey accordingly.

You will at once issue instructions to your deputies, requiring them to abandon the practice of surveying mining claims under the direction of parties in interest, and to conform to the rule as hereinbefore prescribed. From an examination of the returns of surveys of mining claims I am satisfied that in many instances the deputy surveyors certify to the value of improvements without ascertaining whether such improvements are made by the claimant or his grantors, or not. No improvements should be included in the estimate unless they have been made by the applicant for survey or by those from whom he derives title. The value of improvements made upon other locations, or by other claimants, should not be taken into consideration, but excluded by deputies in their estimate of improvements upon the claim.

You will so instruct your deputies, and hereafter require them to certify in each instance that the improvements and expenditures considered by them in their estimate, and which they must describe in their report, were made by the applicant or by the persons from whom he derives title.

The following certificate will be attached to the field-notes of survey by the Surveyor-general:

"I certify that the foregoing transcript of the field-notes of the survey of the \_\_\_\_\_ mining claim, situate in \_\_\_\_\_ mining district, county of \_\_\_\_\_, and \_\_\_\_\_ of \_\_\_\_\_ has been correctly copied from the original notes of said survey on file in this office; that said field-notes furnish such an accurate description of said mining claim as will, if incorporated into a patent, serve fully to identify the premises; and that such reference is made therein to natural objects and permanent monuments as will perpetuate and fix the *locus* thereof.

"I further certify that the value of the labor and improvements upon the said mining claim, placed thereon by the claimant and his grantors, is not less than five hundred dollars, and that said improvements consist of—(here describe the improvements made by the applicant and his grantors upon the claim.) I further certify that the plat thereof filed in the U. S. Land Office at \_\_\_\_\_ is correct and in conformity with the foregoing field-notes.

"\_\_\_\_\_ , U. S. Surveyor-General for \_\_\_\_\_."

"U. S. Surveyor-General's Office, \_\_\_\_\_, 187—."

The following certificate will be indorsed upon each plat by the Surveyor-General, viz:

"The original field-notes of the survey of the \_\_\_\_\_, from which this plat has been made, have been examined and approved and are on file in this office, and I hereby certify that they furnish such description of said \_\_\_\_\_ mining claim as will, if incorporated into a patent, serve fully to identify the premises; and that such reference is made therein to natural objects and permanent monuments as will perpetuate and fix the *locus* thereof.

"I further certify that the value of the labor and improvements upon the said mining claim, placed thereon by the applicant and his grantors, is not less than five hundred dollars, and that said improvements consist of—(here describe the improvements made by the applicant or his grantors upon the claim.) And I further certify that this is a correct plat of said \_\_\_\_\_ mining claim or premises, made in conformity with said original field-notes of survey thereof.

"\_\_\_\_\_ , U. S. Surveyor-General for \_\_\_\_\_."

"U. S. Surveyor-General's Office, \_\_\_\_\_, 187—."

WILLIS DRUMMOND, *Commissioner*.

## Contests between Mineral and Agricultural Claimants.

[Issued by the General Land-Office March 20, 1872.]

In order to save as much as possible the expense, trouble, and delay incident to the present manner of taking proofs as to the mineral or agricultural character of lands, it is hereby directed that testimony upon this point may be taken before a clerk of a court of record in and for the county in which the land is situate, after due notice, in the following manner, to wit:

Hereafter, when an application is filed to enter land as agricultural which is alleged, under oath, to be mineral in character, or which is returned upon the official town-ship plat as mineral, or land which is now or may hereafter be suspended by order of this office for proof as to the non-mineral character thereof, you will, upon such application being made, require such applicant to publish, at his own expense, a notice thereof once each week, for four consecutive weeks, in a newspaper of largest circulation published nearest to the land in question; such notice to give the name and address of the claimant, the designation of the subdivision embraced by his filing, the names of any miners or mining companies whose claims or improvements are upon the land, or in the immediate vicinity thereof, the names of the parties who filed the affidavits that the land is mineral: and, finally, the notice should name a day, which shall not be less than thirty (30) days from the date of the first insertion of said notice in such newspaper, upon which testimony will be taken before the county clerk, to determine the facts as to the mineral or non-mineral character of the land, when such persons as may be brought by the parties in interest will be examined and their testimony reduced to writing; the whole to be duly attested by the seal of the court, and transmitted to the Register and the Receiver, who will thereupon examine and forward the same to this office, with their joint opinion as to the character of the land, as shown by the testimony. A copy of this notice must be posted in a conspicuous place, upon each forty-acre subdivision claimed, for four consecutive weeks, proof of which must be made under oath by at least two persons, who will state when the notice was posted and where posted.

At the hearing, there must be filed the affidavit of the publisher of the paper that the said notice was published for the required time, stating when and for how long such publication was made, a printed copy thereof to be attached and made a part of the affidavit. In every case where practicable, in addition to the foregoing, personal notice must be served on the mineral affiants, and upon any parties who may be mining upon or claiming the land.

At the hearing, the claimants and witnesses will be thoroughly examined with regard to the character of the land; whether the same has been thoroughly prospected; whether or not there exists within the tract or tracts claimed any lode or vein of quartz or other rock in place, bearing gold, silver, cinnabar, or copper, which has ever been claimed, located, recorded, or worked; whether such work is entirely abandoned, or whether occasionally resumed; if such lode does exist, by whom claimed, under what designation, and in which subdivision of the land it lies; whether any placer mine or mines exist upon the land; if so, what is the character thereof—whether of the shallow surface, description, or of the deep cement, blue lead, or gravel deposits; to what extent mining is carried on when water can be obtained, and what the facilities are for obtaining water for mining purposes; upon what particular forty-acre subdivisions mining has been done, and at what time the land was abandoned for mining purposes, if abandoned at all.

The testimony should also show the agricultural capacities of the land, what kind of crops are raised thereon, and the value thereof; the number of acres actually cultivated for crops of cereals or vegetables, and within which particular forty-acre subdivisions such crops are raised; also which of these subdivisions embraces his



improvements, giving in detail the extent and value of his improvements, such as house, barn, vineyard, orchard, fencing, etc.

It is thought that *bona fide* settlers upon lands really agricultural, will be able to show, by a clear, logical, and succinct chain of evidence, that their claims are founded upon law and justice; while parties who have made little or no permanent agricultural improvements, and who only seek title for speculative purposes, on account of the mineral deposits known to themselves to be contained in the the land, will be defeated in their intentions.

The testimony should be as full and complete as possible; and in addition to the leading points indicated above, everything of importance bearing upon the question of the character of the land should be elicited at the hearing. If, upon a review of the testimony at this office, a forty-acre tract should be found to be properly mineral in character, that fact will be no bar to the execution of the settler's legal right to the remaining non-mineral portion of his claim, if contiguous. The fees for taking testimony and reducing the same to writing, in these cases, when taken by a clerk of a court of record, as aforesaid, will have to be defrayed by the parties in interest.

When, by reason of proximity to the local land office, an applicant to enter lands of this class prefers to have the testimony taken before the register and the receiver, instead of the clerk of a court of record, as aforesaid, he has this option. In such case the mode of proceeding is fully set forth in the circular of the sixth of May, 1871, which circular is hereby modified, as to the manner of giving notice, so as to conform with these instructions relative to that point. It must be steadily kept in mind that the testimony hereby authorized to be taken before the clerk of a court is not for the purpose of determining questions of conflict between either pre-emption or mineral claimants, but simply to determine the character of the land, whether mineral or agricultural.

When the testimony is taken before the clerk of a court, as aforesaid, the Register and the Receiver will be entitled to no fees; those paid by the parties to the county clerk being all they are required to pay with reference to the proof as to the character of the land.

No fear need be entertained that miners will be permitted to make entries of tracts ostensibly as mining claims, which are not mineral, simply for the purpose of obtaining possession and defrauding settlers out of their valuable agricultural improvements; it being almost an impossibility for such a fraud to be consummated under the laws and regulations applicable to obtaining patents for mining claims. The fact that a certain tract of land is decided upon testimony to be mineral in character, is by no means equivalent to an award of the land to a miner. A miner is compelled by law to give three months publication of notice, and three months posting of diagrams and notices, as a preliminary step; and then, before he can enter the land, he must show that the land yields mineral; that he is entitled to the possessory right thereto in virtue of compliance with local customs or rules of miners, or by virtue of the statute of limitations; that he or his grantors have expended, in actual labor and improvements, an amount of not less than one thousand dollars thereon, and that the claim is one in regard to which there is no controversy or opposing claim. After all these proofs are met, he is entitled to have a survey made at his own cost, where a survey is required, after which he can enter and pay for the land embraced by his claim.

It is quite unlikely that a miner would undertake these long and expensive proceedings, simply for the purpose of attempting to defraud an agriculturist out of a tract of land which was not mineral but improved agricultural land, when there is an almost absolute certainty, not only of his scheme being frustrated, but also of his being unable to furnish the proof always required as a basis of patent for a mineral claim.

WILLIS DRUMMOND, *Commissioner.*

### What are Valuable Mineral Deposits.

The Commissioner of the General Land Office, having received many letters of inquiry respecting lands containing valuable deposits of borax, carbonate and nitrate of soda, sulphur, alum, and asphalt, issued the following instructions relating thereto, under date of July 15, 1873 :

The first section of the act of Congress, approved May 10, 1872, reads as follows : "That all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase," etc.—[See § 2319, Rev. Stat.

The second section declares "that mining-claims upon veins or lodes of quartz, or other rock in place, bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, heretofore located," etc.—[See § 2320, Rev. Stat.

The sixth section refers to "a patent for any land claimed and located for valuable deposits."—[See § 2325, Rev. Stat.

It will be observed that in the first section of the act the expression "valuable mineral deposits" is employed, while in the second and sixth sections the language is, "valuable deposits." Allowing, however, that it was the intention of the law-makers by this act to dispose of "valuable mineral deposits," the question becomes this: "What is a valuable mineral deposit?"—[See §§ 2319, 2320, 2325, Rev. Stat.

The meaning of the word *valuable* need not be discussed. Anything a person is willing to give money for, or that is useful or precious, or that has merchantable qualities, is valuable. The word *deposit* has always been construed by this office to be a general term, embracing veins, lodes, ledges, placers, and all other forms in which valuable metals have ever been discovered.

#### MINERALS.

In the sense in which the term mineral was used by Congress, it seems difficult to find a definition that will embrace what mineralogists agree should be included. The several authorities consulted in this connection seem to find it an easier task to determine what is not, than what is, mineral. However, in all the works on mineralogy that have come under my notice, borax, nitrate and carbonate of soda, sulphur, alum, and asphalt are classified and discussed as minerals.

Alger's edition of Phillips' Mineralogy speaks of "the crust of the globe as consisting chiefly of earths and earthy minerals." Between earths and minerals there is a clear line of demarkation, and, though difficult to express in a few words, chemical composition and crystallization are the principal means of tracing the distinction. Webster seems to be the most accurate in his definition of a mineral, for he recognizes chemical composition as the important consideration. He defines a mineral to be "any inorganic species having a definite chemical composition."

#### VALUABLE MINERAL DEPOSITS.

From a careful examination of this matter, the conclusion I reach as to what constitutes "a valuable mineral deposit" is this :

That whatever is recognized as a mineral by the standard authorities on the subject, where the same is found in quantity and quality to render the land sought to be patented more valuable on this account than for purposes of agriculture, should be treated by this office as coming within the purview of the mining act of May 10, 1872.

The language of the statute is so comprehensive, and capable of such liberal construction, that I cannot avoid the conclusion that Congress intended it as a general mining law "to promote the development of the mining resources of the United States," and to afford a method whereby parties holding the possessory right under

local laws and regulations could secure title to tracts containing valuable accretions or deposits of mineral substances, except where a special law might intervene, reserving from sale, or regulating the disposal, of particularly specified mineral-bearing lands.

To the several inquiries in the letters referred to, I therefore reply that lands valuable on account of borax, carbonate of soda, nitrate of soda, sulphur, alum, and asphalt, as well as "all valuable mineral deposits," may be applied for and patented under the provisions of the mining act of May 10, 1872. In case an application should be presented to you for a survey of land valuable for other minerals than those specified herein and in the act itself, you will first refer the question to this office, in order that applicants may be saved the expense of applying for lands that may be reserved by a special act of Congress.

It will be observed that the mineral-producing lands are divided into two classes—the one class embraces lands where the mineral matter is within "rock in place," or geologically speaking, "*in situ*;" and the second includes placers and all forms of deposits excepting those in "rock in place." In this connection, I deem it a matter of importance to give the construction this office places upon the expression, "vein or lode of quartz or other rock in place," to prevent mistakes in locating the two classes of mines referred to, thereby saving to claimants considerable expense and delay.

#### VEINS AND LODES.

In geology and among miners, veins or lodes imply generally an aggregation of mineral matter found in the fissures of the rocks which inclose it, but are of great variety, veins differing very much in their formation and appearance. Lode is a term in general use among the tin miners of Cornwall, and was introduced on the Pacific coast by emigrants from the Cornish mines, and signifies a fissure filled either by metallic or earthy matter. In several of the mining districts, the terms lead and ledge are employed in the local regulations concerning mines. Lead is used to convey the same idea as lode, while ledge would seem to indicate a layer or stratum of mineral interposed between a course or ridge of rocks.

Veins may be either sedimentary, plutonic, or segregated, or of infiltration or attrition, depending upon the peculiar formation or the mode of occurrence of the mineral deposit. There is also another form of deposit different from either of those mentioned above, called contact deposit.

European miners mention still others, called in England "floors," in Germany "Stockwerke," and a form of deposit known as "Fahlband." These latter are, more properly speaking, ore-bearing belts, irregular in their dimensions, but presenting a certain degree of parallelism with each other. Similar in some respects to the Fahlbands, are the metalliferous zones, or "amygdaloidal bands," which are said to exist on Mount Lincoln and Mount Bross, Colorado.

However, if the question were raised, neither of the forms of deposit known as contact deposit, Fahlbands, or segregated veins, could be accepted as true metalliferous veins, nor could it frequently be made to appear, without expensive excavation whether the metal in the mine for which a patent is sought occurs in the form of a true vein or not.

But there is no reason for supposing that the terms were employed in their strict geological signification. The plain object of the law is to dispose of the mineral lands of the United States for money value, and whatever form of deposit can be embraced in the general phrase "vein or lode of quartz, or other rock in place," must be sold at the rate of five dollars per acre.

It is evidently the policy of the Government to include as much land as possible under this designation, for the reason that, as the most valuable metals and minerals occur in the several vein-formations, it is desirable that the lands wherein they are

discovered should be sold in limited quantities, thereby preventing the few from monopolizing large tracts, which ought to remain open to all for exploration and development; and for the further reason that the Government derives a larger revenue from the sale of lands of this description.

In fine, I include in the first class all lands wherein the mineral matter is contained in veins or ledges, occupying the original habitat or location of the metal or mineral; whether in true or false veins, in zones, in pockets, or in the several other forms in which minerals are found in the original rock, whether the gangue, or matrix, is disintegrated at the surface or not.

WILLIS DRUMMOND, *Commissioner*.

### Instructions Concerning Coal Lands.

Under the act of Congress approved March 3, 1873, [Secs. 2347—2352, Rev. Stat., pp. 25-27 *ante*], the following circular of instructions was issued, dated April 15, 1873:

1. The sale of coal-lands is provided for: 1st. By ordinary private entry under section one. 2d. By granting a preference right of purchase based on priority of possession and improvement under section two.—[See §§ 2347-2348, Rev. Stat.

2. The land entered under either section must be *by legal subdivisions*, as made by the regular United States survey; entry is confined to surveyed lands; to such as are vacant, not otherwise appropriated, reserved by competent authority, or containing valuable minerals other than coal.—[See § 2347, Rev. Stat.

3. Individuals and associations may purchase; if an individual, he must be twenty-one years of age and a citizen of the United States, or have declared his intention to become such citizen.—[See § 2347, Rev. Stat.

4. If an association of persons, each must be qualified as above.

5. A person is not disqualified by the ownership of any quantity of other land, nor by having removed from his own land in the same State or Territory.

6. Any individual may enter by legal subdivisions as aforesaid any area not exceeding one hundred and sixty acres.—[See § 2347, Rev. Stat.

7. Any association may enter not to exceed three hundred and twenty acres.

8. Any association of not less than four persons duly qualified, who shall have expended not less than \$5,000 in working and improving any coal mine or mines, may enter under section two not exceeding six hundred and forty acres, including such mining improvements.—[See § 2348, Rev. Stat.

9. The price per acre is \$10 where the land is situated *more than fifteen miles* from any completed railroad; and \$20 per acre where the land is *within fifteen miles* of such road.—[See § 2347, Rev. Stat.

10. Where the land lies *partly within fifteen miles* of such road and in *part outside* such limit, the *maximum* price must be paid for all legal subdivisions the greater parts of which lie within fifteen miles of such road.

11. The term "completed railroad" is held to mean one which is actually constructed on the face of the earth; and lands within fifteen miles of any point of a railroad so constructed will be held and disposed of at \$20 per acre.

12. Any duly qualified person or association must be preferred as purchasers of those public lands on which they have opened and improved, or shall open and improve, any coal mine or mines; and which they shall have in actual possession.

13. Possession by agent is recognized as the possession of the principal. The clearest proof on the point of agency must, however, be required in every case, and a clearly defined possession must be established.

14. The *opening and improving* of a coal mine, in order to confer a preference right of the purchase, must not be considered as a mere matter of form; the labor expended and improvements made must be such as to clearly indicate the good faith of the claimant.

15. These lands are intended to be sold where there are adverse claimants therefor to the party who by substantial improvements, actual possession, and a reasonable industry shows an intention to continue his development of the mines, in preference to those who would purchase for speculative purposes only. With this view, you will require such proof of compliance with the law, when lands are applied for under section two, by adverse claimants as the circumstances of each case may justify.—[See § 2348, Rev. Stat.]

16. In conflicting claims, where improvement has been made *prior to March 3, 1873*, you will, if each party make subsequent compliance with the law, award the land *by legal subdivisions*, so as to secure to each, as far as possible, his valuable improvements; there being no provision in the act allowing a joint entry by parties claiming separate portions of the same legal subdivision.—[See § 2351, Rev. Stat.]

17. In conflicts, when improvements, etc., have been commenced subsequent to *March 3, 1873*, or shall be hereafter commenced, priority of possession and improvement shall govern the award when the law has been fully complied with by each party. A mere possession, however, without satisfactory improvements, will not secure the tract to the first occupant when a subsequent claimant shows his full compliance with the law.—[See § 2351, Rev. Stat.]

18. After an entry has been allowed to one party, you will make no investigation concerning it at the instance of any person, except on instructions from this office. You will, however, receive all affidavits concerning such case and forward the same to this office, accompanied by a statement of the facts as shown by your records.

19. Prior to entry, it is competent for you to order an investigation, on sufficient grounds set forth under oath of a party in interest, and substantiated by the affidavits of disinterested and credible witnesses.

20. Notice of contest in every case where the same is practicable must be made by reading it to the party to be cited and by leaving a copy with him. This notice must proceed from your office and be signed by the register or receiver. Where such personal service cannot be made by reason of the absence of the party, and because his whereabouts are unknown, a copy may be left at his residence, or if this is unknown, by posting a copy in a conspicuous place on the tract in controversy, and by publication in a weekly newspaper having the largest general circulation in the vicinity of the land, (where no newspaper shall be specified by this office,) for five consecutive insertions, covering a period of four weeks next prior to the trial; and in each case requiring such notice, a copy must be forwarded with the returns to this office, accompanied with proof of service by affidavit indorsed thereon.

21. In every case of contest, all papers in the same must be forwarded to this office for review before an entry is allowed to either party.

22. Thirty days from your decision will be allowed by you to enable any party to take an appeal, or file argument to be forwarded to this office.

23. No appeal will be entertained unless the same shall be forwarded through the district land-office.

24. The party may still further appeal from the decision of the Commissioner of the General Land-Office to the Secretary of the Interior. This appeal must be taken within sixty days after service of notice on the party. This may be filed with the district land-officers and by them forwarded, or it may be filed with the Commissioner, and must recite the points of exception.

25. If not appealed, the decision is by law made final. (See section 10, act June 12, 1858, United States Statutes, volume 11, page 317.) After appeal, thirty days are usually allowed for filing arguments, and the case is then sent to the Secretary, whose decision is final and conclusive.

26. Manner of obtaining title: First by private entry. The party will present the following application to the register, and will make oath to the same:

"I, \_\_\_\_\_ hereby apply, under the provisions of the act approved March 3, 1873, entitled 'An act to provide for the sale of the lands of the United States containing coal, to purchase the \_\_\_\_\_ quarter of section \_\_\_\_\_, in township \_\_\_\_\_, of range \_\_\_\_\_, in the district of lands subject to sale at the land-office at \_\_\_\_\_, and containing \_\_\_\_\_ acres, and I solemnly swear that no portion of said tract is in the possession of any other party; that I am twenty-one years of age, a citizen of the United States, (or have declared my intention to become a citizen of the United States,) and have never held nor purchased lands under said act, either as an individual or as a member of an association; and I do further swear that I am well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that there is not, to my knowledge, within the limits thereof, any vein or lode of quartz or other rock in place bearing gold, silver, or copper; and that there is not within the limits of said land, to my knowledge, any valuable mineral deposit other than coal. So help me God. "\_\_\_\_\_."

To this affidavit, the register will append the usual jurat.

27. Thereupon the register, if the tract is vacant, will so certify to the receiver, stating the price, and the applicant must then pay the amount of the purchase-money.

28. The receiver will then issue to the purchaser a duplicate receipt, and at the close of the month the register and receiver will make returns of the sale to the General Land-Office, from whence, when the proceedings are found regular, a patent or complete title will be issued; and on surrender of the duplicate receipt such patent will be delivered at the option of the patentee, either by the Commissioner at Washington, or by the register at the district land-office.

29. This disposition of private entry will be subject to any valid prior adverse right which may have attached to the same land, and which is protected by section six.—[See § 2352, Rev. Stat.]

30. Second. When the application to purchase is based on a priority of possession, etc., as provided for in section two, the claimant must, when the township-plat is on file in your office, file his declaratory statement for the tract claimed within sixty days from and after the first day of his actual possession and improvement. Sixty days, exclusive of the first day of possession, etc., must be allowed.—[See § 2348, Rev. Stat.]

31. The declaratory statement must be substantially as follows, to wit:

"I, \_\_\_\_\_, being \_\_\_\_\_ years of age, and a citizen of the United States, (or having declared my intention to become a citizen of the United States,) and never having, either as an individual or as a member of an association, held or purchased any coal-lands under the act approved March 3, 1873, entitled 'An act to provide for the sale of the land of the United States containing coal,' do hereby declare my intention to purchase, under the provisions of said act, the \_\_\_\_\_ quarter of section \_\_\_\_\_, in township \_\_\_\_\_, of range \_\_\_\_\_, of lands subject to sale at the district land-office at \_\_\_\_\_, and that I came into possession of said tract on the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18—, and have ever since remained in actual possession continuously, and have expended in labor and improvements, on said mine the sum of \_\_\_\_\_ dollars, the labor and improvements being as follows: (here describe the nature and character of the improvement-); and I do furthermore solemnly swear that I am well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that

there is not to my knowledge within the limits thereof, any vein or lode of quartz or other rock in place bearing gold, silver, or copper; and that there is not within the limits of said land, to my knowledge, any valuable mineral deposit other than coal.

“\_\_\_\_\_.”

32. When the township-plat is not on file at date of claimant's first possession, the declaratory statement must be filed within sixty days from the filing of such plat in your office.

33. When improvements shall have been made prior to June 4, 1873, the declaratory statement must be filed within sixty days from that date.

34. No sale under this act will be allowed by you prior to September 4, 1873. One year from and after the expiration of the period allowed for filing the declaratory statement is given, within which to make proof and payment, but you will allow no party to make final proof and payment except on notice as aforesaid to all others who appear on your records as claimants to the same tracts.

35. A party who otherwise complies with the law may enter *after* the expiration of said year, *provided* no valid adverse right shall have intervened. He postpones his entry beyond said year at his own risk, and the Government cannot thereafter protect him against another who complies with the law, and the value of his improvements can have no weight in his favor.

36. One person can have the benefit of one entry or filing *only*. He is disqualified by having made such entry or filing alone, or as a member of an association. No entry can be allowed an association which has in it a single person thus disqualified, as the law prohibits the entry or holding of more than one claim, either by an individual or an association. You are to allow no entry under this act of lands containing other valuable minerals. You will determine the character of the land under the present rules relative to agricultural and mineral lands. Those that are sufficiently valuable for other minerals to prevent their entry as agricultural lands cannot be entered under this act.—[See pp. 35-50 *ante*.

37. Assignments of the right to purchase under this act will be recognized when properly executed. Proof and payment must be made, however, within the prescribed period, which dates from the first day of the possession of the assignor who initiated the claim.

38. You will so construe this act in its application as not to destroy or impair any rights which may have attached prior to March 3, 1873. Those persons who may have initiated a valid claim under any prior law relative to coal-lands will be permitted to complete their entries under the same.

39. You will report at the close of each month as “sales of coal-lands” all filings and entries under this act in separate abstracts commencing with number *one*, and thereafter proceeding consecutively in the order of their reception. Where a series of numbers has already been commenced by sale of coal-lands, you will continue the same without change. The affidavit required from each claimant, under section two, at the time of actual purchase will be as follows, to wit:

“I, \_\_\_\_\_, claiming the right of purchase under the act of Congress entitled ‘An act to provide for the sale of the lands of the United States containing coal,’ approved March 3, 1873, to the \_\_\_\_\_ quarter of section \_\_\_\_\_, in township \_\_\_\_\_, of range \_\_\_\_\_, subject to sale at \_\_\_\_\_, do solemnly swear that I have never had the right of purchase under this act, either as an individual or a member of an association, and that I have never held any other lands under its provisions; I further swear that I have expended in developing coal-mines on said tract in labor and improvements the sum of \_\_\_\_\_ dollars, the nature of such improvements being as follows: \_\_\_\_\_; that I am now in the actual possession of said mines, and make the entry for my own use and benefit, and not directly or indirectly for the use and benefit of any other party; and I do furthermore swear that I am well acquainted

with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that there is not, to my knowledge, within the limits thereof, any vein or lode of quarts or other rock in place bearing gold, silver, or copper; and that there is not within the limits of said land, to my knowledge, any valuable mineral deposit other than coal. So help me God.

"I, \_\_\_\_\_, of the land-office at \_\_\_\_\_, do hereby certify that the above affidavit was sworn and subscribed to before me this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

"\_\_\_\_\_."

40. In case the purchaser shows by an affidavit that he is not personally acquainted with the character of the land, his duly authorized agent who possesses such knowledge may make the required affidavit as to its character; but whether this affidavit is made by principal or agent, it must be corroborated by the affidavits of two disinterested and credible witnesses having knowledge of its character.

WILLIS DRUMMOND, *Commissioner*.

## TABLE OF REFERENCE

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DIGEST OF DECISIONS  
UNDER THE  
MINING STATUTES OF THE UNITED STATES

RENDERED BY THE DEPARTMENT OF THE INTERIOR.

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ABANDONMENT.

See EXPENDITURES; RE-LOCATION; TUNNELS, 7.

ADVERSE CLAIM.

1. **Who may file.**—Any member of a mining company may file an adverse claim on behalf of his company, where he has the proper authority.—[Jan. 28, 1869.

2. **What should accompany.**—An adverse claimant should file, with the other papers constituting his adverse claim, either an abstract of title, with copy of the original notice of location, or certified copies of the notice of location, and the deeds of conveyance tracing his right of possession from the original locators of the adverse claim.—[Oct. 31, 1873.

3. A protest or adverse claim must be accompanied by a survey, made and certified by a United States Deputy Mineral Surveyor, together with a certificate, or sworn statement, by the surveyor "as to the approximate value of the labor performed or improvements made upon the claim of the adverse party."—[July 17, 1873.

4. **Hypothetical controversies.**—A construction of the mining laws which would suspend the disposal of the mineral lands, and prevent the Government from obtaining its price therefor until hypothetical controversies can be finally adjusted in the courts, cannot prevail.—[Chollar Potosi Mining Co. *vs.* Julia Mining Co. Decision of Commissioner DRUMMOND, May 27, 1872.

5. **Separate claims to be filed to each conflicting application.**—Adverse claimants must file a separate and distinct claim against each application, which it is alleged conflicts with the premises owned by such adverse claimant.—[June 9, 1873.

6. **What adverse claimant must show.**—An adverse claimant should show a compliance with the local laws in recording his claim, and in regard to expenditures, and should file a copy of the original notice of his location, and show the nature or extent of the conflict alleged.—[May 6, 1873.

7. Where an adverse claimant has not fully complied with the law and the instructions thereunder, he fails to make out a case which will authorize a suspension of proceedings.—[May 1, 1873.

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The digest is compiled from the decisions of the Commissioner of the General Land-Office, the decisions, on appeal, of the Secretary of the Interior, the Opinions of the Attorneys-General, and the Land-Office Reports. The dates of the decisions are given in all cases, and if taken from the decision of the Secretary of the Interior or the Opinion of the Attorney-General, it is so stated.

8. An adverse claimant should state the nature of his claim, where and how it originated, whether by purchase or location, and other material or essential particulars, and must show an interest in the ground sought to be patented, or an authority for appearing on behalf of those interested.—[Dec. 29, 1871, March 4, 1872, and March 19, 1872.

9. **Abstract of title.**—Where an abstract of title is filed by an adverse claimant it should be properly attested by the seal of the Recorder.—[Oct. 31, 1873.

10. An omission to file an abstract of title should be treated as an irregularity only, and not as a defect that vitiates an adverse claim.—[Opinion of Asst. Atty-Gen. SMITH, Sept. 30, 1873.

11. **Amendment.**—When an adverse claim has been filed it cannot be amended so as to embrace a larger portion of the premises than that described in the original adverse claims.—[Jan. 14, 1873.

12. **Dismissal.**—Where an adverse claimant dismissed his suit, and brought a second suit, after the expiration of the thirty days allowed him for bringing the first suit; *held*, that such action cannot be considered and will not retard the progress of patent to the applicant.—[Decision of Secretary DELANO, July 8, 1872.

13. Where an adverse claimant was allowed thirty days within which to bring suit against an applicant, and failed to do so, his claim was dismissed and patent directed to issue.—[Aug. 18, 1873.

14. A second application for a patent, made by an adverse claimant, which conflicted with a prior application, cannot be entertained where an interval of more than ninety days (required by the act of July 26, 1866) had elapsed since filing of the first application, and the second applicant had not filed an adverse claim within that time.—[Oct. 27, 1873.

15. **Time for filing.**—An adverse claim filed after the expiration of the time prescribed by statute cannot be considered, and no extension of time can be given for filing adverse claims.—[Jan. 14, 1873, and April 18, 1873.

16. **Pleadings.**—Where an adverse claimant made no claim to the ledge sought to be patented, and averred that his claim was on a separate and distinct lode from the one sought to be patented; *held*, that this did not constitute an adverse claim either to the lode or surface ground.—[April 1, 1872.

17. An adverse claimant should set forth in detail the facts upon which he bases his adverse claim. A statement in general terms embodying conclusions of law without stating the facts specifically, will not be considered as evidence.—[May 6, 1873.

18. Where an adverse claimant alleged in his sworn statement "that sufficient work and all acts and things were done according to the acts of Congress, the mining laws of the district, and customs of miners to hold and possess the same." *Held*, that the statement was defective as the facts should have been stated specifically and in detail.—[*Ibid*.

19. An instrument setting forth an adverse claim should be so drafted as to inform the applicant that a portion of the mining claim which he was seeking to obtain a patent for did not belong to him, but did belong to the protestant (or adverse claimant) and it is intended that this should be done with such precision as to fairly advise him of the "nature, boundaries and extent" of the adverse claim, so that the applicant might prepare himself to establish on the trial before the courts, his own, and defeat the adverse claim.—[Opinion of Asst. Atty-Gen. SMITH, Sept. 30, 1873.

20. Adverse claimants are not required to show affirmatively that they have complied with all the local usages and customs; if they have failed to comply with such usages and a forfeiture is denounced for such failure, it is a matter of defense.—[*Ib.*

21. If an adverse claimant properly alleges that he is the owner of the claim, it is good pleading, and sufficient to notify the applicant for patent of what is claimed.—[*Ibid.*

22. An allegation of parties to a suit that they compose the company is sufficient, and they are not required to prove that they are the original locators, or the identical parties who presented the adverse claim.—[*Ibid.*

23. The regulations issued by the Commissioner requiring the filing of plat and field notes and an abstract of title, do not have the force of law and were never intended to act as a bar where an applicant in good faith has done all that was in his power to comply with them.—[*Ibid.*

24. **Suspension of proceedings.**—A case having once been suspended and carried to the courts for adjudication, and having been there dismissed for want of attention and prosecution on the part of an adverse claimant, cannot be stayed a second time for such purpose, but must proceed on the application for patent.—[Nov. 17, 1869.

25. An adverse claimant, asking for a suspension of proceedings in the General Land-Office, on the ground that a motion for a new trial had been granted in a court of justice, must show that such motion had been granted without conditions.—[Nov. 18, 1872.

26. The General Land-Office will neither supervise or disregard the decisions of the courts in cases of conflicting claims to the possession of mining property which may have been submitted to them.—[Jan. 26, 1863.

27. **Survey.**—Where adverse claimants made use of reasonable means to procure field-notes and survey, and were prevented from doing so by the act of an applicant for patent; *held*, that to allow the applicant to exclude the adverse claim for that reason would be to permit him to take advantage of his own wrongful act.—[Opinion of Asst. Att'y-Gen. SMITH, Sept. 3, 1873.

28. **When will not be entertained.**—An opposition by lienholders to issue of patent will not be entertained, as the lienholders are fully protected under the provisions of the thirteenth section of the act of July 9, 1870.—[June 19, 1871.

29. **Verification.**—The jurat to the adverse claim required by the act of May 10, 1872, must be made by the party and cannot be made by an attorney.— [Decision of C. DELANO, Secretary of the Interior, Nov. 24, 1873.

30. Where several parties unite in an adverse claim, the jurat is sufficient if made by one of the parties.—[Decision of C. DELANO, Secretary of the Interior, Nov. 24, 1873.

31. An adverse claim should be verified before some officer authorized to administer oaths "within the land district where the claim may be situated."— [Land Office Decisions of Feb. 3 and March 7, 1873, and Decision of Acting Secretary COWEN, Oct. 28, 1873.

32. **Waiver.**—Where an adverse claimant failed to commence suit within the time prescribed by the General Land-Office, his adverse claim was considered waived and the applicant was allowed to proceed with his application for patent.—[Sept. 26, 1872.

33. **Withdrawal by co-tenant.**—Where one of several co-tenants made out a *prima facie* adverse showing to an application for patent, and his co-tenants subsequently withdrew this adverse claim, *held*, that their withdrawal did not prejudice the rights of the adverse claimant.—[Feb. 12, 1873.

34. **What will not be considered.**—Easements are protected by the fifth section of the act of July 26, 1866, and an objection to issue of patent founded upon an easement will not be considered an "adverse claim" where the contestant makes no claim to the mining ground.—[April 16, 1871.

35. In establishing a system for the sale of mineral lands, Congress intended to allow the first patentee to follow his vein, though it may lead him under "adjoining lands;" and it was intended that such "adjoining land" should be sold subject to this right, and this right does not create a "controversy" or "opposing claim," nor an "adverse claim" to the possession of him who enters the adjoining land for mining purposes.—[Chollar-Potosi Mining Co. vs. Julia Mining Co., Decision of Secretary DELANO, Feb. 24, 1873.

36. The mere fact of bringing the suit by the adverse claimant and obtaining a judgment in his favor does not necessarily give him a right to a patent by filing a certified copy of the judgment-roll and the certificate of the surveyor-general, and paying for the land and paying the fees.—[Decision of Secretary DELANO, April 1, 1875.

37. Suit or action should be commenced *by the adverse claimant* in order to entitle him to a stay of proceedings. The act of 1872 expressly requires it to be done within thirty days from the filing of the adverse claim, and the act of 1866, upon a fair construction, requires it within a reasonable time.—[Decision of Secretary DELANO, March 22, 1875.

See AGRICULTURAL LANDS, 4—7, 13; JURISDICTION; LOCATION, 15; SURVEY.

#### AFFIDAVIT.

1. An affidavit made by a president of a mining company in his official capacity, will be sufficient, without producing a certified copy of the record of his election.—[Opinion of Asst. Atty. Gen. SMITH, Sept. 30, 1873.

2. An affidavit made before a Justice of the Peace will be accepted without proof of his official character.—[*Ibid.*, Sept. 30, 1873.

3. A Notary Public may administer oaths in any State or Territory, and a certificate under his official seal is sufficient evidence of his being a Notary.—[*Ibid.*, Sept. 30, 1873.

4. Where affidavits are taken without notice to the opposing party, and with no opportunity for cross-examination, they will not be considered in rendering a decision in the premises.—[March 14, 1873.

5. Under the mining act of May 10, 1872, an affidavit must be verified before an officer authorized to administer oaths in the land-district where the claim is situated.—[Decision of Sec'y. DELANO, April 30, 1874.

6. An incorporated mining company may verify an application or an adverse claim through its officers or agents.—[Oct. 26, 1874.

7. Proof of citizenship may be verified before any officer authorized to administer oaths.—[Feb. 3, 1873.

See ADVERSE CLAIMS, 29, 30, 31; AGRICULTURAL LANDS, 12.

#### AGRICULTURAL LANDS.

1. Land adjudged to be agricultural cannot be entered under the mining laws unless discoveries or developments tending to show that the tract is more valuable for mining than agricultural purposes, have been made since the determination of the character of such land.—[Dec. 2, 1872.

2. Where an agricultural entry was allowed after due publication of notice, posting, and personal service, and no opposition was made, the case will not be re-opened unless the mineral claimants show they have the possessory right to an actual mining claim upon the land so entered, or that fraud was resorted to by the agricultural claimants in giving the required notices, and in what specific forty-acre subdivisions their mining location exists.—[June 20, 1872.

3. Where land had been adjudged agricultural upon testimony submitted at a hearing held after due notice, an application to re-open the case on a mineral affidavit was refused.

4. **Contests by Mineral Claimants.**—In a controversy between agricultural and mineral claimants, where it was established that though a small portion of the land once contained gold in paying quantities, and that portion had long since been exhausted and abandoned, and that no part of the tract contained minerals in sufficient quantity to pay for working, and nearly all of the land was valuable for agriculture, the agricultural entry prevailed.—[Decision of Acting Secretary COWEN, May 6, 1872.

5. Where there is a contest as to the mineral or agricultural character of land, the hearing should be had in the county where said land is situate, before some officer authorized to administer oaths.—[Dec. 2, 1872.

6. In any case where there is a contest, or where the non-mineral character of the land is not entirely clear and satisfactory, the local land office will not permit an entry until the testimony has been reviewed in the General Land Office.—[May 10, 1872.

7. In cases of contest between mineral and agricultural claimants, where proper notice was given by agricultural claimants, by publication and personal notice, the General Land Office will not re-open the case unless the mineral claimants show fraud in pre-emption or that they had an actual mining claim thereon under local mining regulations.—[Sept. 19, 1872.

8. **Valuable mineral deposits on.**—Where lands containing valuable mineral deposits have been included in a homestead or an agricultural entry, said entry will be cancelled at any time prior to issuance of patent, upon satisfactory evidence of the existence of such valuable deposits.—[Nov. 11, 1873.

9. Where mineral deposits are discovered on agricultural lands after patent has issued to a party claiming under the laws regulating the disposal of agricultural lands, they pass with the patent.—[July 10, 1873, and Nov. 11, 1873.

10. Where valuable deposits of minerals are discovered upon a legal subdivision of the public lands after the same has been entered as agricultural, but before patent has issued, the parties owning the possessory right to the mine may make application for patent for the same, and the agricultural entry will be cancelled to that portion of the tract embraced by said mining claim.—[March 12, 1873.

11. **Proof of Character.**—Where land has been returned as agricultural and duly entered as such and payment made, and subsequently it is alleged to be mineral, the agricultural claimants have a right to insist that the burden of proof shall be upon the mineral claimants.—[Feb. 12, 1872.

12. The non-mineral affidavit required in agricultural entries may be made by an agent, upon filing his authority to act in the premises, and furnishing proof that his principal is not personally acquainted with the land.—[Aug. 20, 1873.

13. In cases of contest as to the mineral or agricultural character of land, the burden of proof will be upon the party seeking to disprove the correctness of the return.—[Dec. 2, 1872.

See APPLICATION FOR PATENT; ENTRY, 12; MINERAL LANDS; PATENT; VALUABLE MINERAL DEPOSITS.

## ALASKA TERRITORY.

No application for patents for mining lands in Alaska Territory can be received in the General Land Office—said territory not having been organized into a surveying district.—[Aug. 2, 1873.

## APPEAL.

1. In the case of *The Overman Mining Co. vs. The Dardanelles Mining Co.*, the question presented was, whether a party having once appealed from the decision of the local officers, and that appeal having been dismissed, can go back of the decision appealed from and appeal from another decision made prior to that, or whether the first appeal brought the whole case before the Commissioner and gave him jurisdiction thereof, and required that all objections to the proceedings up to the date of the first appeal should be presented to the Commissioner, or if not presented regarded as waived. *Held*, that the appeal brought before the Commissioner the entire proceedings that had taken place prior to the date of the order appealed from, and that all exceptions should have been presented and insisted upon before the Commissioner on the hearing of such appeal, and in default thereof should be considered as having been waived.—[Decision of B. R. Cowen, Acting Secretary of the Department of the Interior, July 19, 1873.

2. The General Land-Office will require a written statement of "points of exception to its action" in cases of appeal to the Department of the Interior.—[Aug. 18, 1873.

3. The law does not fix a time within which an appeal may be taken from the decisions of local land-officers, and it is the custom and usage of the General Land-Office to permit appeals from decisions of Registers and Receivers when the same are properly filed within reasonable time, unless the time is mentioned in the decision within which the appeal must be filed.—[April 11, 1873.

4. In cases of appeal from the General Land-Office to the Secretary of the Interior no new or additional evidence can be submitted.—[Aug. 21, 1872.

## APPLICATION FOR PATENT.

1. Each application is an entirety and rests upon its own merits. It is contrary to the spirit and letter of the law to permit one person or association of persons to file one protest against several applications for patents for separate and distinct lodes.—[June 9, 1873.

2. There is nothing in the mineral statutes of Congress forbidding one person or an association of persons purchasing as many "separate and distinct locations" as he or they may desire, and embracing in one application for patent their entire claim.—[Nov. 21, 1874.

3. Where a purchaser, after the commencement of proceedings to obtain patent, but before entry at the local office, files in the General Land-Office a deed from an applicant to himself, the Register and Receiver will be instructed to have the certificates and receipts made out in his name.—[Oct. 2, 1872, and March 8, 1873.

4. Where a miner included in his application a legal subdivision of land, not embraced in his original mineral location, and which he did not claim to be mineral land, he was restricted to the land included in the original location, and the remaining portion of the land was held to be agricultural.—[April 15, 1873.

5. An application for patent will be rejected when the survey does not accurately define the boundaries of the claim.—[Jan. 6, 1874.

6. Where it appears that a greater width of surface ground is embraced in an application for patent than the local laws permit, the width of the claim must be diminished to conform to the local laws before entry.—[May 1, 1873.

7. **By incorporations.**—Where incorporated companies apply for patents they must file a copy of their certificate of incorporation or charter with the application. [Sept. 11, 1873.

8. **Filing of.**—A filing of an application for patent with the Register is equivalent to "filing with the Register and Receiver," within the spirit and meaning of the act of May 10, 1872.—[Opinion of Asst. Atty-Gen. SMITH, Sept. 30, 1873, and Decision of Secretary DELANO, Nov. 24, 1873.

9. **Conflict in.**—Where two applications for patent under the mining statute conflict with each other, the applicants may compromise and release to each other a portion of the premises embraced in the respective applications, and a survey will be required showing the exterior boundaries of the claims and the compromise line.—[Aug. 18, 1874.

10. **Who may make.**—Where several parties own separate and distinct portions of a claim application for patent may be made by either for that portion of the claim owned by him, but where several parties own individual interests in a mining claim all should join in an application for patent.—[Feb. 18, 1873.

11. **Description in.**—An application will be rejected where the description of the premises is erroneous or insufficient.—[June 18, 1873.

12. Where several locators on legal subdivisions convey their interest to one person, such person may apply for a patent to the extent of one hundred and sixty acres, on filing copies of the original notices of location and an abstract of title showing the record title to be in the name of the applicant.—[Jan. 22, 1873.

13. Persons having no possessory rights under local laws and regulations, and who have not made the improvements required by the mining statute, are not authorized to apply for patents.—[Jan. 28, 1869.

14. **On town sites.**—Applications for patent or entries for mining claims situate within the extensive boundaries of town sites will be received where applicants show by satisfactory proof possession, or right of possession thereto, under local and congressional enactments.—[June 14, 1873.

15. **When applicant must commence de novo.**—Where an applicant, after filing plat and field-notes of his mining claim, requested that the United States Surveyor-General for the State be instructed to correct said plat and field-notes, in order that they should be "in conformity to law and the regulations of the land office, and correctly and accurately show the boundaries of said claim;" *held*, that the request cannot be granted, but the applicant must commence *de novo*.—[Jan. 6, 1874.

16. **Evidence on.**—The evidence on file, on an application for patent, must show that the applicant has the record title of the premises described in his application.—[June 18, 1873, and Jan. 6, 1874.

17. Where the applicant for patent cannot procure the affidavit of the parties who posted the notice and diagram of location on a lode, the testimony of two credible persons who are cognizant of the necessary facts will be received.—[Nov. 4, 1873.

18. Where a mining claim is situated outside of a regularly constituted mining district, affidavit of the fact should be made, and secondary evidences of possessory title will be received.—[Nov. 12, 1872.

19. *Ex parte* affidavits may be received in applications under the mining statute, but the officer receiving such testimony should be satisfied of its truth and the credibility of the witness.

20. **Defective diagram and notice.**—Where a diagram and notice has been drawn in a manner calculated to deceive, and parties have been injuriously affected thereby, the General Land-Office will open the case for investigation or reject the claim and require proceedings thereon *de novo*.—[Dec. 8, 1871.

21. **Defective notice.**—Where the published notice does not properly describe the *locus* of the claim, as the same is set forth in the application and diagram, proceedings should be commenced *de novo*.—[Nov. 10, 1871.

22. **Certificate of Surveyor-General.**—The requirement of the mining statute that the Surveyor-General shall certify "to the character of the vein exposed" means that the certificate should show the nature of the mineral contained in the vein, and not whether the metal occurs in a true or false vein.—[July 20, 1871.

23. **More than one location may be embraced in an application for patent.**—If a mining company is in the possession and entitled to the possession of several locations, by virtue of compliance with the local laws, customs, and regulations, and the acts of Congress, it may embrace them in one application and receive a patent for all of said claims upon full compliance with the law and instructions. In cases of this kind a survey must be made of each location separately, and the published and posted notices and diagrams must contain a full and accurate description of each tract applied for. The notice and diagram must be posted upon each tract described therein, and record title should be furnished in regard to each location and proof that not less than five hundred dollars has been expended upon each separate location or claim. But claims situated at remote distances from each other in different land or mining districts may not be so embraced.—[Land-Office Report, 1874, p. 52. See ADVERSE CLAIM, 14; ENTRY; IRON; MILL SITE; PATENT, 7, 16; PUBLICATION, 1, 6, 8; SURVEY, 2, 6, 8.

#### CALIFORNIA.

1. The congressional grant of March 3, 1853, to the State of California, of sections 16 and 36, for school purposes, does not include mineral lands.—[Keystone Mining Co. *et al.* vs. State of California. Opinion of Secretary DELANO, Jan. 18, 1872, and Commissioner DRUMMOND, May 14, 1873.

See SIXTEENTH AND THIRTY-SIXTH SECTIONS, 3.

#### CITIZENSHIP.

1. No distinction is made by the mining laws in the matter of location, occupation and appropriation of mining claims between the rights and privileges of a citizen and those of a person who has declared his intention to become a citizen.—[Sept. 7, 1874.

2. Where a party filed his declaration of intention to become a citizen of the United States after the date of his location of a mining claim, but prior to the date of his application for patent, it was held that he was qualified to make entry, apply for and receive patent.—[Sept. 7, 1874.

3. Naturalization has a retroactive effect and is deemed a waiver of all liability to forfeiture and a confirmation of the alien's former title.—[Sept. 7, 1874.

4. A corporation is in no sense a citizen within the meaning of that term as used in the Constitution of the United States, or in the laws relating to the public lands.—[Opinion of Asst. Atty-Gen. SMITH, Aug. 4, 1871; and Decision of Commissioner DRUMMOND, June 7, 1871.



5. It has not been the practice of the land-office to require proof that the original locators were citizens, except in those cases where they were the applicants for patent. It will not be presumed that they were not citizens, in the absence of any allegation or objection before the issuing of patent to that effect. After patent has actually issued it is too late to make this objection.

See AFFIDAVIT.

#### COAL LANDS.

1. It was held by the land-office that while the fourth section of the act of March 3, 1873 (17 U. S. Stat, 607), [Sec. 2350, Rev. Stat.] limits each individual to one entry and prohibits the holding of other coal lands by one who has in any manner participated in the one entry allowed; it is not intended that the tract or tracts entered shall be in compact form, the only restriction being that of quantity bounded by legal lines of subdivisions.—[Land-Office Report, 1874, p. 53.]

2. Where an incorporated company desires to file an application for patent under laws relating to coal land, this office has ruled that it will be necessary for the Secretary of such company to file with the local officers his affidavit setting forth in full the names of all the stockholders at the date of actual purchase, and that each stockholder will be required to file his affidavit to the effect that he has never held nor purchased any coal lands under the act of Congress, approved March 3, 1873, entitled "An act to provide for the sale of lands of the United States containing coal," either as an individual or as a member of an association.—[Land-Office Report, 1874, p. 53.]

3. Upon a case submitted from Utah it was held that where land has been returned by the Surveyor-General as "coal lands," it cannot be entered as a town site until it has been decided by this office upon testimony submitted at a hearing held in accordance with existing circular instructions that the land is of more value for agricultural and town site purposes than for coal mining, the coal land law providing for the sale of lands by legal subdivisions only.—[Land-Office Report, 1874.]

4. Lands containing coal or other valuable mineral deposits cannot be patented under the laws regulating the disposal of agricultural lands.—[Dec. 11, 1873.]

5. Where land has been returned as "coal land" by the Surveyor-General, it can not be entered as a town site until a hearing has been held to determine whether it is mineral or agricultural in character.—[April 21, 1874.]

6. The coal land law provides for the sale of land by legal subdivisions only, and hence where there is a controversy it will be necessary to present evidence in regard to each forty-acre tract.—[April 21, 1874.]

7. The right to follow the vein, although it may enter the adjoining land, is only authorized in cases of veins or lodes, bearing the precious metals, and does not apply to a vein or bed of coal.—[*Ibid.*]

#### CEMENT CLAIMS.

Auriferous cement claims must be patented as placers.—[Feb. 12, 1872.]

#### CLAIM.

The term "claim," as used in the mining law, is held to mean that portion of the vein or lode, and adjoining surface to which the claimant has the right of possession by virtue of a compliance with the laws of the United States and the local customs or rules of miners not in conflict therewith.—[Sept. 9, 1872, and June 20, 1872.]

## COMSTOCK LODE.

1. **An adverse claim based on a contingency will not be entertained.**—The case of the Chollar Potosi Mining Co. *vs.* the Julia Mining Co. involved the rights of locators to veins or lodes lying east of the Comstock Lode, and adjoining on the surface patented ground on the Comstock. The facts were as follows: On February 4th, 1879, a patent issued to the Chollar Potosi Mining Co. for fourteen hundred linear feet of the Comstock Lode, the premises granted being bounded on the east and west by the walls of the Comstock, not yet definitely ascertained, and containing 34 74-100 acres. On the 30th December, 1871, the Julia Mining Company applied for patents to several lodes lying easterly of the premises patented to the Chollar Potosi, all of which were located subsequent to the issue of patent to the Chollar Potosi. On the 20th December, 1871, the Chollar Potosi Mining Company filed a protest against issuing patents to the Julia Company on the ground that patent had been issued to said Chollar Potosi Company for their claim on the Comstock, and that said lodes for which the Julia Company had made application for patent are the same which underlie the ground embraced in the Chollar Potosi patent, and that underlying the land claimed by the Julia Company there exists no other vein, lode, or lodes than such as are part and parcel of the Comstock so patented to the Chollar Potosi. There was no conflict as to the surface ground embraced by the Julia \* \* \* \* \* The question raised was whether the protest entered by the Chollar Potosi Mining Company against the issuance of patents to the Julia Company, and the reasons assigned by said company for such protest constituted "an adverse claim" within the meaning and spirit of the act of July 26, 1866. The Chollar Potosi Company failed to produce any proof in support of their statement that the lodes sought to be patented by the Julia Company were identical with the Comstock Lode. The Julia Company produced proof tending to show that each of the lodes claimed by said company is a separate and distinct lode from the Comstock. The Commissioner of the General Land Office held that the objections of the Chollar Potosi Company to the application of the Julia Company was based "on a contingency which may possibly hereafter occur, and not on anything definite or tangible," and that although "the Comstock lode and all of the veins or lodes claimed by the Julia Company may at some remote period be found in their course downward into the earth to converge and unite, and below their point of junction form one main fissure, this is a contingency only determinable by future developments" and will not justify the indefinite suspension of the execution of the United States Mining Laws until such hypothesis is demonstrated \* \* \* \* \* "If the lodes claimed by the Julia Company should be patented and after further developments be found to unite with the Comstock Lode, the Chollar Potosi Company, in view of the law and by reason of their prior location and patent would be as fully invested with title to said lode below the point of union, including all the space of intersection, as if the Julia claims had not been patented, their right however to the vein claimed by said Julia Company above the point of intersection, should they be found to unite not being recognized by statute." The Chollar Potosi Company appealed to the Secretary of the Interior where the decision of the Commissioner of the General Land Office was affirmed and patent directed to issue to the Julia Company. —Chollar Potosi Mining Co. *vs.* Julia Mining Co. Decision of Commissioner DRUMMOND, May 27, 1872, and Secretary DELANO, Feb. 24, 1873.

2. **Conditions expressed in patents on the Comstock.**—In issuing patents for claims on the Comstock Lode, or claims within two thousand feet on either side of the line of the Sutro Tunnel, a clause will be inserted that such claim shall be subject to the condition specified in the the third section of the Sutro Tunnel Act (approved July 25, 1866.) "and the grantee herein shall contribute and pay to the owners of the tunnel, constructed pursuant to said act, for drainage or other benefits derived from

said tunnel or its branches, the same rate of charges as have been or may hereafter be named in agreement between such owners and the companies representing a majority of the estimated value of said Comstock Lode, at the time of the passage of said act, as provided in said section."—[March 8, 1873.

3. No patent can issue for premises lying within the limits of the Sutro Tunnel grant, unless said premises come within the exceptions provided for in the second section of the Sutro Tunnel Act, approved July 25, 1856.—[March 29, 1873.

See APPENDIX.

#### CORPORATION.

See APPLICATION FOR PATENT, 7; AFFIDAVITS, 1, 6; CITIZENSHIP, 4; COAL LANDS, 2.

#### EASEMENTS.

See WATER RIGHTS; ADVERSE CLAIMS, 34.

#### ENTRY.

When premises are in litigation no entry should be permitted by either party.—[Oct. 3, 1873.

A single entry may be made on a tract of three hundred and twenty acres of placer ground where the parties hold the same in accordance with local laws.—[July 10, 1873.

Where a suit against an applicant has been decided in his favor the Register will allow the entry to be made upon the filing of the certificate of the clerk of the court that no suit is pending, brought by an adverse claimant, affecting the title to said property.—[Oct. 30, 1873.

Parties will not be permitted to make entry of mineral land as placer claims until they furnish satisfactory proof that such premises do not contain any known veins or lodes of quartz or other rock in place bearing valuable minerals.—[Aug. 27, 1873, and Oct. 17, 1873.

Where application was made by A for certain placer mining ground, and no mention was made of the existence of any vein or lode within its exterior boundaries, and subsequently B made application for a patent on a vein or lode within such boundaries, and A filed an adverse claim; *held*, that B was entitled to make entry of the premises as a vein or lode.—[Oct. 17, 1873.

Where several non-contiguous tracts lying in one mining district are embraced in one entry, it is essential that a diagram of each parcel, together with a copy of the notice of intention to apply for a patent therefor should be posted on the claim for the period required by law. The notice to be posted in the Register's office for a like period may consist of a copy of that published in the newspaper.—[Nov. 19, 1870.

**Mining claim on town site.**—Where a party has a *bona fide* mining claim within the limits of a town site, he will be allowed to enter the same, even though it conflict with a town site application.—[Aug. 19, 1872, and Jan. 21, 1873.

**Construction of section 10, act of 1872 [Sec. 2341, Rev. Stat.]**—The object of the tenth section [of act of 1866] was to give to persons, who had in good faith made agricultural settlements on public lands theretofore designated as mineral, but subsequently determined to be agricultural, a preference in pre-empting or entering the land as homesteads, over those admitted to similar rights by the eleventh section.—[Dec. 14, 1872.

See AGRICULTURAL LANDS, 1-13; COAL LANDS, 1; PATENT, 17.

## ERROR.

A clerical error in the register's final certificate in a mineral entry in an owner's name, as Butterfield instead of Butterwood, does not affect the validity of a patent issued under the name of Butterwood.—[Decision of Secretary DELANO, April, 1875.

See SURVEY, 7.

## EVIDENCE.

The rule that no witness should be excluded on account of being a party to or interested in the issue tried should be observed in proceedings before the Executive Department, subject to the rules governing the weight of testimony.—[Aug. 15, 1869.

Parol evidence is admissible to define what tract is embraced in a location.—[Decision of Secretary DELANO, Highland Chief case.—April, 1875.

See ADVERSE CLAIM, 17; AGRICULTURAL LANDS, 11, 12, 13; APPLICATION FOR PATENT, 16-19.

## EXPENDITURES.

1. **On lodes and veins.**—On all lodes located prior to May 10, 1872, there must be an annual expenditure of not less than ten dollars in labor or improvements for each one hundred feet so claimed along the lode.—[Aug. 27, 1873.

2. Where several individual locations, made prior to May 10, 1872, upon the same lode are held in common by one or more persons, the entire expenditure necessary to hold all the claims so held in common on such lode may be made upon any one claim thereon.—[*Ibid.*

3. Expenditures made upon any one claim or lode, however great, can in no way be made to apply to other lodes claimed by the same party.—[*Ibid.*

4. Upon all claims located after May 10, 1872, not less than one hundred dollars shall be expended in labor or improvements during each year, and that year shall commence from the date of the location of the claim.—[Sept. 14, 1872.

5. Expenditures may be made from the surface or in running a tunnel for the purpose of developing a lode, and where a tunnel is run for the development of a particular lode or vein, it will be considered as work done upon such lode or vein.—[May 2, 1874.

6. A claimant of a location, to entitle him to the possession of his location, must make the annual expenditure upon his claim each and every year after January 1, 1875, until patent shall have been issued therefor.—[May 12, 1874, and Dec. 2, 1874.

7. Section five of the act of May 10, 1872 [See 2324, Rev. Stat.], requiring certain expenditures each year, applies to all claims which have not been patented.—[Aug. 17, 1872.

8. Where a number of claims of one hundred or two hundred feet each, as the case may be, upon the same lode are held in common by one or more persons, the aggregate amount necessary to hold all the claims so held in common on a lode, at the rate of ten dollars per hundred feet, may be expended upon any one claim thereon, or, in other words, at any one point on the lode so held in common; the words "where such claims are held in common, such expenditure may be made on any one claim," being construed to mean that where several of these individual locations, made previous to May 10, 1872, upon the same lode are held in common by one or more persons, the entire expenditure necessary to hold all the claims so held in

common on such lode may be made upon any one claim thereon, but that expenditures made upon any one lode or claim, however great, can in no way be made to apply to other lodes claimed by the same parties. In the case under consideration a certain mining company are the claimants of nine separate lodes, all of which it is their purpose to develop and improve by a mining tunnel now being run in order to intersect such lodes below the surface. If this interpretation of the law is correct, work done and expenditures made in constructing a tunnel intended for the development and improvement of lodes will not satisfy the legal requirement as to expenditure as aforesaid; but such expenditure or labor must be made in good faith upon each lode claimed, otherwise the same will be subject to relocation by other parties, as provided by law.—[Land Office Report, 1872, p. 63.]

9. **On placer claims.**—Annual expenditures are required only upon vein or lode claims, leaving placer claims as they had been previous to the passage of the act of May 10, 1872, subject to the operation of the local laws, rules, regulations and customs.—[April 25, 1874:]

10. Where an application embraces two or more separate and distinct tracts of placer mining ground (not contiguous) the required amount of expenditure (viz: \$500) should be expended upon each tract, and a copy of the diagram and notice posted on each tract.—[Nov. 21, 1874.]

11. The mining laws do not require an expenditure of five hundred dollars upon each "location" of a placer claim embraced in an application for patent, where the locations are contiguous and embrace one claim.—[*Ibid.*]

12. One of the conditions precedent to obtaining patent for a mining claim, whether vein or placer, is that an amount of not less than five hundred dollars shall have been expended thereon in actual labor and improvements.—[May 27, 1874.]

See MILL-SITE; RE-LOCATION; SURVEY, 6; TUNNELS, 7-9.

#### GENERAL LAND OFFICE.

See ADVERSE CLAIM, 25, 26, 32; AGRICULTURAL LANDS, 6-7; APPEAL, 2, 3, 4; MINERAL LANDS, 4.

#### INDIAN TERRITORY.

See MINERAL LAND, 4.

#### INTERSECTING LODS.

See COMSTOCK LODE, 3.

#### IRON.

Iron lands are patented under the mining act of May 10, 1872. Where the iron is found in lodes or veins, or in rock in place, the proceedings to obtain patents are the same as those prescribed in case of veins or lodes bearing the precious metals. Where the iron is not found in rock in place, the proceedings are the same as those prescribed in case of placer claims.—[Land Office Report, 1874, p. 53.]

#### JURISDICTION.

In mining cases consent cannot give jurisdiction. Substantial compliance with the statute is required.—[Decision of Secretary DELANO, Highland Chief case, April 1, 1875.]

## LOCAL LAWS.

1. The miners of the district, State or Territory are authorized to regulate the width of a location; *provided*, however, that the width shall not exceed six hundred feet, nor be limited to less than fifty feet.—[May 20, 1873.

2. In the absence of State or Territorial enactments regulating the occupancy and possession of mining claims, miners may alter or amend the laws of the district, but this action will not affect claims already located, as a claim must conform to the laws in force at the date of its location.—[Aug. 25, 1871.

3. Where parties claim under a location made under local mining regulations their title cannot have an inception prior to date of a notice of location in which their names or those of their grantors appear.—[Sept. 17 and Oct. 11, 1873.

4. Where local mining regulations permit locations in excess of the minimum fixed by the Congressional acts, they will be restricted accordingly.—[March 19, 1873.

5. Where the local laws of a district adopted in 1854 provided that a miner might appropriate one hundred and sixty acres, it was in conflict with the fourth section of the mining act of Congress of 1866, and the statutory act must prevail.—[Opinion of Asst. Atty-Gen. SMITH, Aug. 4, 1871.

6. The mining regulations of the different mining districts remain intact and in full force with regard to the size of locations where they do not permit locations in excess of the limits fixed by Congress. Where the local laws provide that placer locations shall not exceed one hundred square feet to each individual, no more than that amount can be located.—[March 19, 1873.

7. In regard to locations made prior to the passage of Territorial or State laws regulating mining claims, and prior to the passage of the mining acts of Congress, the land officers will require proof that the claim is in accordance with the local customs or regulations of the miners of the district in which such claim is situated.—[Sept. 22, 1870.

8. In the absence of local district laws applicants are required to show compliance with the mining acts of Congress in force at the date of their locations.—[May 16, 1873.

See ADVERSE CLAIM, 6; LOCATION, 1-13; PATENT, 2, 6, 12, 16; RE-LOCATION.

## LOCATION.

1. **On veins and lodes.**—Locations made prior to the act of 1866, and in full compliance with local laws at that date, were valid under said act for the quantity authorized by local laws, subject to the general limitation of such local laws.—[Aug. 26, 1874.

2. There is no provision of law to prevent parties from locating other claims upon the same lode, outside of the first location made on the vein or lode, provided that no one location shall exceed fifteen hundred feet in length.—[June 17, 1873.

3. No claim located after May 10, 1872, can, under any circumstances, exceed six hundred feet in width; whether a location made after that date can equal six hundred feet in width depends upon the local regulations, or State or Territorial laws in force in the mining district in which it is located. The surface right shall not be limited to less than fifty in width, unless adverse claims existing on May 10, 1872, render such lateral limitation necessary.—[May 20, 1873.

4. Claims located prior to May 10, 1872, will be governed, as to extent, by the local laws, customs and rules then in force.—[Nov. 18, 1873.

5. A location being illegal and void, the subsequent proceedings, even if in due form, would be invalid.—[April 15, 1873.

6. Miners' location notices should not be held to technical accuracy, but are sufficient if they put an honest inquirer in the way of finding the lode.—[Decision of Secretary DELANO, April 1, 1875.

7. **Placer.**—The size of placer claims located prior to July 9, 1870, is regulated and controlled by the local law then in force. Subsequent to July 9, 1870, and prior to May 10, 1872, no location of a placer claim can exceed one hundred and sixty acres. After the passage of the act of May 10, 1872, no location made by an individual can exceed twenty acres, and no locations made by an association can exceed one hundred and sixty acres.—[Nov. 21, 1874.

8. Where several placer claims have been surveyed by the United States under the local laws there is nothing to prevent the patenting of the several tracts in the same neighborhood as a single entry, though not contiguous; but this will not authorize the joint entry of parcels or claims situated at wide distances from each other in different land or mining districts.—[Decision of Commissioner WILSON, Nov. 19, 1870.

9. In mining districts over which the lines of the public surveys have not yet been extended, a placer claim held and occupied according to the district regulations, and upon which not less than one thousand dollars have been expended, may, in the absence of an adverse claimant, and after the usual proceedings, be surveyed, entered and patented, whatever may be its shape or area; *provided*, that such claim was located at a date prior to the passage of the statute of July 9, 1870, which interdicts, after that date, the location of a claim by any person or association of persons exceeding one hundred and sixty acres in extent, whatever the mining regulations of the district may prescribe.—[March 1, 1871.

10. Upon surveyed lands no lot or claim smaller than ten acres can be patented under the act of July 9, 1870, to any person or association of persons; the subdivision of forty-acre tracts into ten-acre legal subdivisions to be effected in the manner prescribed by the law and instructions.—[*Ibid.*

11. The location of a placer mine, made after May 10, 1872, upon surveyed land should embrace legal subdivisions of the public lands, where the same can be done without interference with the rights of other *bona fide* mineral, agricultural, or other claimants in the same tract.—[May 19, 1873.

12. Where placer mining claims are situate upon unsurveyed land, or where by reason of some other *bona fide* claimant a legal subdivision of surveyed land cannot be embraced in an application for patent, a survey must be made of the premises in accordance with the instructions of the General Land-Office.—[*Ibid.*

13. Placer mining claims located on surveyed lands after May 10, 1872, must conform as nearly as practicable with the public surveys.—[*Ibid.*

14. Where a placer claim is situate upon surveyed lands and conforms to the legal subdivisions thereof, no survey or plat will be required. In such case proof of improvements may be made by affidavit of parties who are familiar with the claim and can testify to the necessary facts. —[Nov. 29, 1873.

15. Proof of posting notice and diagram on the claim should be specific as to *when* the period of such posting commenced. It is too late after patent has issued to object to the proof because it is not thus specific.—[Decision of Secretary DELANO, April 1, 1875.

See LOCAL LAWS, 1, 8; ENTRY; RE-LOCATION; § 2331 and note; also pp. 42, 44.

## MILL SITES.

Where a mill site is applied for in connection with a lode claim, the expenditure of five hundred dollars should be made on the lode claim only, and is not required on the mill site.

Where application for a mill site is made satisfactory proof must be furnished that the land claimed is not mineral in character.—[July 29, 1872, and May 20, 1873.

An applicant for a mill site on which a lode exists claimed by adverse parties may file an abandonment of said lode and will be entitled to receive a patent for the remainder of the premises.—[Aug. 4, 1874.

The certificate of the Surveyor-General attached to a mill-site claim should contain a clause in regard to the value of improvements upon such claim.—[April 16, 1873

See EXPENDITURES; PATENT, 23.

## MINERAL LANDS.

1. The mining act of May 10, 1872, divides the mineral-producing lands into two classes, viz: first, where the mineral matter is found in *rock in place*; and the second includes *placers and all forms of deposit not found in rock in place*. Only such lands as come under the second classification can be patented as placer claims.—[Land Office Report, 1874, p. 52.

2. Mineral lands are expressly excluded from the privileges of the pre-emption or homestead laws by the acts of Congress of 1841 and the seventh section of the act of May 30, 1862, extending pre-emption rights to unsurveyed lands in California.—[Oct. 16, 1868.

3. Where lands are returned as mineral by the Surveyor-General, the burden of proof will be on parties who question the correctness of the return, and unless they establish the fact that they are properly and clearly agricultural land they must fail in the assertion of any claim or right to such land under the laws regulating the disposal of agricultural land. Proof of the fact that no paying mines have thus far been discovered or developed on such land is not sufficient.—[April 3, 1874.

4. Minerals in the Indian Territory are not reserved by the United States, and the General Land-Office has no control over mineral-bearing lands therein.—[June 26, 1873.

5. State selections of mineral lands cannot be approved.—[March 14, 1871.

6. Where township plats have not been filed in the office of the Register and Receiver, mineral lands within such townships will be considered as upon unsurveyed lands and dealt with accordingly.—[March 22, 1871.

7. Circular instructions issued from the General Land-Office apply to all mineral lands of the United States, whether surveyed or unsurveyed.—[Jan. 28, 1869.

8. Agricultural College scrip cannot be used in payment for mineral lands.—[Jan. 30, 1873.

See ADVERSE CLAIM, 35; AGRICULTURAL LANDS, 1-13; ENTRY; MILL SITE; PATENT, 4, 10, 22, 23; RAILROADS.

## MINERS' REGULATIONS.

See LOCAL LAWS.



## NEVADA.

Mineral lands in the State of Nevada situate within sections sixteen and thirty-six are the property of the United States, and did not pass to the State by the enabling act of March 21, 1864, granting such sections for school purposes.—[Decision of Secretary Cox, May 20, 1870.

See SIXTEENTH AND THIRTY-SIXTH SECTIONS.

## NEW MEXICO

In dealing with claims located in New Mexico between July 18, 1855, and July 26, 1866, the territorial law of July 18, 1865, will be recognized in all respects, but with regard to locations made subsequent to July 26, 1866, the extent of ground located must be restricted by the mining acts of Congress in force at the date of the location.—[Sept. 22, 1870.

## PATENT.

1. A patent must conform to and agree with the description as given in the plat and field-notes of the applicant.—[April 17, 1873.

2. The mining laws do not restrict a party to one patent, but give the right to secure title to as many claims as he may be entitled to under local laws, and upon which the necessary amount has been expended in labor and improvements.—[Sept. 21, 1872.

3. A patent will issue to parties who satisfactorily show they have the possessory title to a lode, even though such patent was made out in the name of others.—[April 4, 1872.

4. No patent shall issue for any mineral lands about which any one, other than the petitioner, asserts any right of possession.—[Opinion of Asst. Atty.-Gen. SMITH, Aug. 4, 1871.

5. No patent can issue where the application states and the diagram shows that no surface ground was claimed along the line of the lode.—[March 24, 1873, and March 29, 1873.

6. Patents for claims located prior to the passage of the mining acts of Congress must conform, as to extent, to the territorial or local laws in force at the date of their location.—[Aug. 14, 1873.

7. **Effect of.**—Where an application for patent was pending under the act of 1866, on the 10th day of May, 1872, none of the rights which the applicant had acquired by virtue of compliance with said act of 1866 were affected or impaired in any way, and patents issued upon applications of this class convey the same rights which were conveyed under the act of 1866, together with all other veins or lodes, the top or apexes of which lie inside the exterior boundaries of the surface ground patented, to the extent and in the manner provided by the third section of the act of May 10, 1872.—[Nov. 10, 1871, Dec. 26, 1872, May 20, 1873, Aug. 17, 1874.

8. A patent granted for a mining claim under the act of July 26, 1866, conveys to the grantee therein named the surface ground embraced within the exterior boundaries of the survey, and the particular lode named in the patent for the number of feet patented along the course thereof, with all its dips, angles, and variations, although it may depart from the surface-ground described in the survey, and enter the land adjoining.—[*Ibid.*

9. **On town-sites.**—In all patents for mining claims situate within the exterior boundaries of a town-site, a clause will be inserted "excepting and excluding all town property rights upon the surface, and all houses, buildings, lots, streets, etc., or other improvements not belonging to the grantee herein, and all rights necessary or proper to the occupation, possession, and enjoyment of the same."—[June 19, 1873.

10. **When will be set aside.**—A patent for mineral lands improperly issued will be set aside.—[Opinion of Atty.-Gen. WILLIAMS, Jan 14, 1873.

11. Where patent was inadvertently issued or procured through fraud, it will be cancelled.—[Oct. 3, 1873, March 6, 1874.

12. If a patent be issued for lands under an agricultural claim while a valid mining claim, under local laws, existed on the premises, and the parties were engaged in mining at the time of the agricultural entry, the General Land-Office will, on satisfactory proof of the fact, afford the miner all the aid in its power to set aside the patent and enable him to acquire title.—[July 17, 1873.

13. Where a patent has been obtained by artifice or fraud upon a record regular upon its face, the General Land-Office will ask the Department of Justice, that the party injured be permitted to use the name of the United States in the prosecution of proper proceedings in the courts.—[July 26, 1873.

14. **To whom will issue.**—Patents for mining claims are issued to the party named in the Register's certificate of entry.—[March 8, 1873.

15. When a party becomes a purchaser after the date of entry, an indorsement should be made upon the duplicate receipt by the applicant, assigning all his rights, whereupon patent will issue to such purchaser.—[Oct. 2, 1872, and March 8, 1873.

16. One or more parties may unite in purchasing the interest of their co-locators and secure a patent for the ground on showing that title is vested in them, provided the requirements of the mining statute and local regulations have been complied with.—[Nov. 6, 1869.

17. Where the duplicate receipt for a mineral entry has been lost, a patent will issue on filing satisfactory proof of the loss and the authority of the applicant to receive such patent.—[April 18, 1870.

18. **Error in.**—An error of description in a patent will be corrected by the General Land-Office by issue of a new patent, upon the relinquishment of the first patent, to be made in writing upon the back of the patent, properly attested, under seal, by the clerk of any court within the land district in which the claim is situated.—[April 11, 1871.

19. The General Land-Office may issue a second patent for the purpose of correcting a mistake or inadvertence.—[July 26, 1873.

20. Where there are no adverse interests, a patent for a mine will not be disturbed, notwithstanding irregularities in issuing it.—[Decision of Secretary DELANO, April 1, 1875.

21. **Reservations in.**—In all patents granted in mineral regions a clause or condition will be inserted expressly protecting and reserving acquired water rights, and making the patent subject thereto.—[March 21, 1872.

22. Every patent issued for mining property contains an express clause by which all other veins or lodes, except the one named in the grant, are excepted and excluded from the conveyance.—[June 19, 1871, and April 1, 1872.

23. **What lands may be patented under mining statutes.**—Where valuable mineral deposits are found in such quantity and quality as to render the land sought to be patented more valuable on this account than for purposes of agriculture, the tracts containing such valuable mineral deposits may be patented under the mining statute.—[April 27, 1874.

24. If land does not contain valuable mineral deposits in quantity and quality sufficient to render the land more valuable on this account than for purposes of agriculture, it cannot be patented, under the mining statute, except in the cases of mill sites, which must be non-mineral in character.—[*Ibid.*]

See AGRICULTURAL LANDS, 9; CITIZENSHIP, 2; COMSTOCK LORE, 1, 2, 3; EXPENDITURES, 12; IRON: LOCATION, 7, 15; MINERAL LANDS, 1; MILL SITES; PUBLICATION, 10; RAILROADS; SPRINGS; SURVEY; TUNNEL, 1.

#### PLACER CLAIMS.

See EXPENDITURES, 9-12; ENTRY; LOCATION, 6-13; LOCAL LAWS, 1-8.

#### PLEADINGS.

See ADVERSE CLAIM, 8, 16-23.

#### PLACER CLAIMS.

See APPLICATION FOR PATENT; ADVERSE CLAIM; ENTRY; EXPENDITURES, 9-12; LOCATION PATENT.

#### POSTING.

That notice and diagram were posted on the claim five days after publication was commenced, and thereafter for ninety days, was an irregularity only, and not fatal.—[Decision of Secretary DELANO, April 1, 1875.]

See ENTRY; LOCATION, 15; PUBLICATION.

#### PUBLICATION.

1. Notice of intention to apply for patent must be published continuously for sixty days in a newspaper to be designated by the Register as published nearest to the claim.—[Nov. 12, 1873; May 7, 1874, and July 24, 1874.]

2. Notice must be published for the full period of sixty days continuously in the same newspaper. Where notice has not been continuously published for the term of sixty days in the same newspaper the applicant must commence *de novo*.—[June 16, 1874.]

3. The notice must be published the same ninety days that the notices and diagrams are posted.—[June 18, 1873.]

4. Where publications of notice are made in weekly newspapers, the time elapsing between the first and the last insertions must include the full period of sixty days.—[Decision of Secretary DELANO, April 30, 1874.]

5. When a computation of time is to commence from an act done, the day on which the act is done is to be excluded.—[Opinion of Asst Atty-Gen. SMITH, Sept. 30, 1873.]

6. Where a notice of application for patent was published forty-nine days in one newspaper and fourteen days in another; *held*, that the publication was defective.—[Nov. 12, 1873.]

7. In estimating the sixty days of publication required by the act of May 10, 1872, the first day of publication should be excluded and the last included.—[Decision of C. DELANO, Secretary of the Interior, Nov. 24, 1873.]

8. Where an association of persons, unincorporated, apply for a patent, the published notice, certificate, and all the papers, should give the names of the applicants.—[Sept. 14, 1873.]

9. The published notice must agree in description with the application, and if it does not, the applicant has failed to comply with the statute.—[Opinion of Asst. Atty.-Gen. SMITH, Aug. 4, 1871.

10. It is too late after patent has issued to make objection that publication of notice from January 6th, 1871, to April 6th, 1871, was not a compliance with the statute of July 26th, 1866.—[Decision of Secretary DELANO, April 1, 1875.

11. Proof of publication, which states that the notice was published for a period of ninety days, commencing April 15th, 1871, is *prima facie* sufficient.—[*Ibid.*

See APPLICATION FOR PATENT, 21, 23.

#### PUBLIC LANDS.

The smallest legal subdivision of public land is a ten-acre tract.—[Oct. 23, 1873.

See MINERAL LANDS; AGRICULTURAL LANDS.

#### RAILROADS.

Mineral lands do not pass to the Central Pacific Railroad by virtue of its grant, but the timber being or growing upon mineral land within ten miles of the center line of said road or branches is granted to said railroad company, excepting so much as is "necessary to support the improvements of mine owners" upon the given tracts.—[Nov. 12, 1874.

When patent issues for mineral lands within the limits of the Central Pacific Railroad grant, a clause will be inserted excepting from the operation of the patent all timber being or growing upon the same, except such as is necessary to support the improvements of a miner.—[Nov. 12, 1874.

See APPENDIX.

#### REGISTERS AND RECEIVERS.

Where an agricultural claimant, pending contest in the local land-office, and before the case had been submitted to the Commissioner of the General Land-Office for review, made payment and received a duplicate receipt. *Held*, that the decision of the local officers was not final, and he only acquired a vested right on condition that the Commissioner should finally concur in the opinion of the local officers, and the power of the Commissioner to revise their action was not taken away by their neglect to report the case until after the duplicate receipt had issued.—[Decision of Sec'y COWEN, April 19, 1872.

Where a decision is rendered by which a claim erroneously entered is reduced in size, the purchase money will be refunded only to the extent necessary to make the payment meet the requirement of the law.—[Sept. 14, 1870.

Where papers have once been filed with Register and Receiver, they become a part of the record and can neither be withdrawn or returned, but must be transmitted to the General Land-Office.—[July 21, 1874.

All official letters, as well as the official record of letters sent by the Registers and Receivers, are the property of the United States, and applicants for patent have the right to examine any and all papers on file, but no papers should be taken from the office.—[April 4, 1873, and April 14, 1873.

See WITNESSES.

## RE-LOCATION.

Where a party applies for a patent for a re-located mine he must prove the expenditure of five hundred dollars on the mine *by himself or his grantors*, notwithstanding that such amount may have been expended by those who abandoned the mine.—[Jan. 30, 1875.]

Claims located since the tenth of May, 1872, become liable to re-location in case the required amount of labor and improvements has not been expended thereon within one year from the date of such location and yearly thereafter.—[Dec. 2, 1874.]

When a patent is applied for on a re-located mine the applicant must show by *prima facie* evidence that it is subject to such re-location under territorial or State laws, where such laws exist.—[Case of the Santa Rita del Cobre Mine, New Mexico, April 15, 1873.]

Where a party claims a lode by virtue of re-location he should furnish proof that such re-location was made in accordance with local laws or regulations.—[Sept. 25, 1873.]

See EXPENDITURES, 8; LOCATION; TUNNELS, 7.

## ROCK IN PLACE.

The term "rock in place," as used in the mining statutes, is held to include every class of claims that can be applied for as a "vein or lode."—[July 20, 1871.]

## SCHOOL LANDS.

See CALIFORNIA; NEVADA; SIXTEENTH AND THIRTY-SIXTH SECTIONS.

## SIXTEENTH AND THIRTY-SIXTH SECTIONS.

1. An application having been made for a patent for a mining claim situated in a school section in the State of California, the question was raised as to the rights of the applicant, in view of the grant made to the State by the act of March 3, 1853. (U. S. Stats., vol. 10, page 241.) It being satisfactorily shown that the mineral claim in question was taken up, held, and improved according to local customs and rules in 1864, and the land was not surveyed by the United States until 1870, it was ruled that at the date of its location said mining premises formed a part of the unsurveyed public domain, which, by the first section of the mining statute of July 23, 1866, is declared "to be free and open to exploration and occupation by all citizens of the United States, and those who have declared their intention to become citizens:" and that as the applicant was in the occupancy of his claim at the date of the Government survey of the township by virtue of the authority of said statute, the fact that the premises fall within a school section, which circumstance the miner had no means of knowing previous to the survey, did not affect his right under the statute of July 23, 1866, and that after complying with its provisions and requirements he would be entitled to a patent, the State of California being by law allowed other land as indemnity for the area so patented.—[Land Office Report, 1871, p. 16.]

2. In dealing with another mineral claim situated in a school section in California, the location of which was not made until after the filing of the plat of the official survey of the township, the right of the claimant to a patent under the mining statute was denied, the land having already passed to the State; the Supreme Court of the United States having decided, in the case of *Cooper vs. Roberts*, (18 Howard 173) that mineral lands pass with a school land-grant to the State.—[This case was decided in 1867, and was overruled by the *Keystone* case, decided June 18, 1872, in which Commissioner DRUMMOND held that the case of *Cooper vs. Roberts* was not applicable to California.]

3. The case of the *Keystone Mining Co. and others vs. the State of California*, involved the right of the State to certain mineral lands within the limits of section 36, granted to the State by the act of Congress of March 3, 1853, granting sections 16 and 36 for school purposes. The mining companies claimed a portion of said land under the mining act of July 26, 1866. The land is mineral in character, and the mines were located in 1851 and have been continuously worked since that time. The survey of the township lines was completed August 27, 1869, and the section lines run March 10, 1870. On the fourth of November, 1870, the State of California sold to one Henry Casey the east half of said section 36, who presented a claim for the same. The local officers rejected the title of the State and their decision was affirmed by the Commissioner. The claimant under the State appealed to the Secretary of the Interior. It was conceded by all parties to the contest that each of the mining companies was entitled to a patent for the lands claimed by it, unless the title for said half section vested in the State of California or its grantee under the act of March 3, 1853. \* \* \* \* \* The principal question at issue was: Does the grant of sections 16 and 36 include mineral lands? The Secretary of the Interior held that Congress by the act of 1853 did not grant to the State any mineral lands that by survey are shown to be in sections 16 and 36, and that the act of July 26, 1866, provides an exclusive method for appropriating the mineral lands of the United States. No surveys of mineral lands were authorized or made until the passage of the Act of June 10, 1870.—[Decision of Secretary DELANO, June 18, 1872.]

#### SPRINGS.

Where a party has possession and right of possession to salt springs, and the deposit of salt renders the land more valuable on this account than for agricultural purposes, a patent for such lands may be secured under the mineral laws.—[April 27, 1874, reversing decision of July 28, 1873.]

The General Land-Office does not regard sulphur springs as saline or mineral, so as to come within the inhibition of the statutes excluding mineral and saline lands from pre-emption entry or scrip location.—[Aug. 25, 1869.]

See APPLICATION FOR PATENT.

#### STAY OF PROCEEDINGS.

See ADVERSE CLAIM, 37.

#### SURVEY.

1. Courses and distances must give way when in conflict with fixed objects.—[Opinion of Asst. Atty.-Gen., July 15, 1873.]

2. A survey must be made of the entire adverse claim, and an adverse claimant cannot color a portion of the applicant's survey and present it as his own survey.—[Sept. 9, 1874.]

3. The survey should show the exterior boundaries of the claim and the width should not exceed the amount of ground allowed by local laws and customs.—[Sept. 11, 1873.]

4. Where a survey does not conform to the legal notice no patent will issue until the error is corrected.—[April 19, 1872.]

5. Immediately upon the expiration of the term of publication required by law, if there have been no adverse claim filed, the claimant shall have the right to apply to the Surveyor-General for a survey, and on compliance with the further provisions of the law will be entitled to patent.—[Dec. 16, 1872.]

6. **Lode claims embraced in one application.**—Where several lode claims are embraced in one application for patent, each tract must be surveyed separately, notice posted on each and five hundred dollars expended on each.

7. **Error in.**—Where any material error occurs in the survey of a mining claim, the applicant should commence *de novo* by filing with the local land officers a plat and field-notes, and publish a notice accurately describing the claim.—[April 17, 1873.

8. **Discrepancy.**—Where there is a discrepancy between the premises described in the application for patent and that embraced in the final survey, proceedings should be commenced *de novo*.—[Nov. 10, 1871.

See APPLICATION FOR PATENT, 5, 9.

#### SURVEYORS.

A deputy mineral surveyor is not authorized to make surveys of mineral claims outside of the State or district for which he is appointed.—[Aug. 6, 1872.

#### SUTRO TUNNEL.

See COMSTOCK LOPE.

#### TIMBER.

Surveyed timber lands may be purchased as other public lands under the pre-emption laws or by commutation under the homestead laws. The pre-emption or homestead claimant may cut sufficient timber for the erection of his buildings, but not for other purposes, and other cutting is regarded as a penal offense. It is held that the United States, as owner of the lands, has all the legal means of protecting the timber which individuals enjoy in like cases. The act of Congress of March 2, 1831, as construed by the Supreme Court, makes the depredating on such timber a criminal offense, punishable with fine and imprisonment. When reliable information reaches the Registers and Receivers that spoliation of public timber is committed, their instructions require them to investigate the matter, to seize all timber found to have been cut without authority on the public land, to sell the same to the highest bidder at public auction, and deposit the proceeds in the Treasury. They are to bring the offense committed to the attention of the proper officers, that the perpetrator may be arrested and held to answer as usual in criminal cases. In these proceedings, however, the purpose in view being merely to protect the rights of the Government, and not to indulge in vindictive prosecutions, due regard is had to the circumstances of each case; and, when these justify so doing, the district officers are authorized to compromise with the parties, on their paying any costs incurred and a reasonable stumpage for the timber, which is then realized and prosecution waived.—[Land-Office Report, 1873, p. 13; 1874, p. 6.

See §§ 3, 4, RAILROAD ACT, APPENDIX.

#### TOWN SITES.

No title can be acquired by a town under the town-site act of March 2, 1867, to any mine of gold, cinnabar or copper, nor to any valid mining claim or possession held under the existing laws.—[Aug. 19, 1872, and Jan. 21, 1873.

See APPLICATION FOR PATENT, 14; COAL LANDS, 3, 5; ENTRY; PATENT, 9.

#### TUNNELS.

1. There is no provision of law for patenting tunnel locations, but lodes discovered in running a tunnel may be patented in like manner as other lodes.—[April 15, 1873.

2. The right is granted to tunnel owners to fifteen hundred feet of each blind lode, not previously known to exist, which may be discovered in their tunnel.—[Sept. 20, 1872.

3. The "line of a tunnel" is the width thereof and no more, and this line is required to be marked on the surface by stakes or monuments placed along the same from the face or point of commencement to the terminus of the tunnel line.—[Sept. 20, 1872.

4. Tunnel owners cannot record a lode discovered by them in running a tunnel which will absorb the actual or constructive possession of other parties on a lode which had been discovered and claimed outside the line of the tunnel before the discovery thereof in the tunnel.—[Sept. 20, 1872.

5. Prospecting for blind lodes is prohibited upon the line of a located tunnel while the tunnel is in progress, but other parties are in no way debarred from prospecting for blind lodes or running tunnels, so long as they keep without the line of such tunnel.—[Sept. 20, 1872.

6. **Expenditures on.**—Expenditures made in running a tunnel intended for the working or development of a lode or lodes is not tantamount to work done upon a lode, as required by the mining law, but such expenditure or labor must be made upon each lode claimed, otherwise the same will be subject to re-location.—[Aug. 27, 1872, and Sept. 9, 1872.

7. No specified amount is required to be expended to retain the ownership of a tunnel location, but locators are required to use reasonable diligence, and failure to prosecute work for six months will be considered as an abandonment.—[Aug. 1, 1873.

8. Some differences of opinion existed among parties in interest as to the correct construction of section four of the act of 1872 [Sec. 2323 Rev. Stats.], and it was decided by this office, in response to certain inquiries on the subject, that the line of the tunnel is the width thereof and no more, and that upon this line only is prospecting for blind lodes prohibited while the working of the tunnel is in progress, and the right is granted to the tunnel owners to fifteen hundred feet of each blind lode, not previously known to exist, which may be discovered in such tunnel, but that other parties are in no way debarred from prospecting for blind lodes or running tunnels so long as they keep without the line of the tunnel as herein defined, the said line being required by regulations to be marked on the surface by stakes or monuments placed along the same from the face, or point of commencement, to the terminus of the tunnel line aforesaid. When a lode is struck or discovered for the first time by running a tunnel, the tunnel owners have the option of recording their claim of fifteen hundred feet all on one side of the point of discovery or intersection or partly upon one or partly upon the other side thereof, but in no case can they so record a claim as to absorb the actual or constructive claim or possession of the other parties on a lode which has been discovered and claimed outside the line of the tunnel before the discovery thereof in the tunnel.—[Land Office Report, 1872; p. 61.

See EXPENDITURES, 5, 8.

#### VALUABLE MINERAL DEPOSITS.

1. Where valuable mineral deposits are found in such quantity and quality as to render the land sought to be patented more valuable on this account than for purposes of agriculture, the tracts containing such valuable mineral deposits may be patented under said mining act. If, however, the land does not contain valuable mineral deposits in quality and quantity sufficient to render the land more valuable on this account than for purposes of agriculture, it cannot be patented under the mining act, except in the case of mining mill sites, which must be of a certain character.—[Land Office Report, 1872, p. 54.



2. Diamonds are "valuable mineral deposits," and the provisions of the act of May 10, 1872, are applicable to lands containing them.—[Opinion of Atty-Gen. WILLIAMS, Aug. 31, 1872.

3. Deposits of borax, coal or iron cannot be entered as agricultural land, but must be entered under the mining laws under the proceedings required in cases of placer mines.—[April 18, 1873, Nov. 1873, and May 25, 1847.

4. Deposits of roofing slate or of fire clay may be patented under the mineral statutes.—[July 10, 1873, and Oct. 23, 1874.

See AGRICULTURAL LANDS, 8, 9, 10; COAL LANDS, 4; IRON; PATENT, 22, 23; SPRINGS.

#### VEINS OR LODES.

See COAL LANDS, 6; ENTRY; EXPENDITURES, 9-12; LOCATION, 1, 5; PATENT, 21; RE-LOCATION; ROCK IN PLACE; TUNNELS, 6-8.

#### VERIFICATION.

See AFFIDAVIT.

#### WATER RIGHTS.

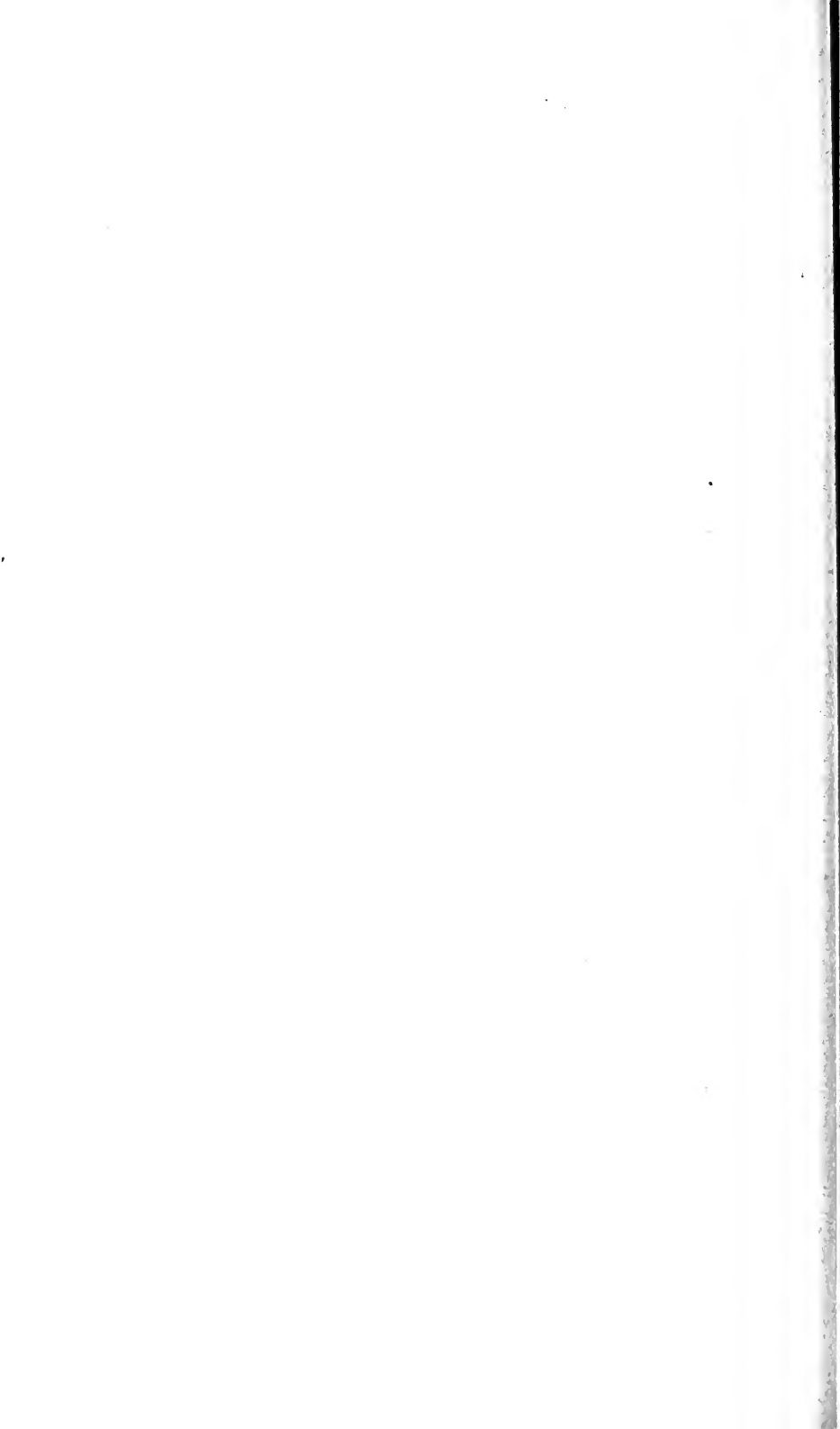
In disposing of public lands upon which water rights have vested and accrued by priority of possession, and which at the time of such disposal are recognized and acknowledged by local customs, laws, and decisions of the courts, the United States will, under the ninth section of the act of July 26, 1866, [Sec. 2339 Revised Statutes] maintain and protect such rights.—[Nov. 23, 1869.

[For judicial decisions upon section 2339, relating to water rights, see *Gallagher vs. Basey*, 1 Montana Reports, 457; *Woolman vs. Garringer*, *id.* 535; *Atchison vs. Peterson*, *id.* 561; and opinions of the Supreme Court of the United States in *Basey vs. Gallagher*, 2 *American Law Times*, N. S. 144, for March and April, 1875; and *Atchison vs. Peterson*, 9 *Pacific Law Reporter*, 25, January 26, 1875; also *Union Mill and Mining Co. vs. Daugberg* U. S. Circuit Court of Nevada, 2 Sawyer's Reports 450

See PATENT, 20; also APPENDIX.

#### WITNESSES.

The law provides no compulsory process to secure the attendance of witnesses before Registers and Receivers.—[Aug. 15, 1868.



## APPENDIX.

## Water Rights in California.

[Title VIII of the Civil Code of California.]

§ 1410. The right to the use of running water flowing in a river or stream or down a cañon or ravine may be acquired by appropriation.

§ 1411. The appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor in interest ceases to use it for such a purpose, the right ceases.

§ 1412. The person entitled to the use may change the place of diversion, if others are not injured by such change, and may extend the ditch, flume, pipe, or aqueduct by which the diversion is made to places beyond that where the first use was made.

§ 1413. The water appropriated may be turned into the channel of another stream and mingled with its water, and then reclaimed; but in reclaiming it the water already appropriated by another must not be diminished.

§ 1414. As between appropriators, the one first in time is the first in right.

§ 1415. A person desiring to appropriate water must post a notice, in writing, in a conspicuous place at the point of intended diversion, stating therein:

1. That he claims the water there flowing to the extent of [giving the number] inches, measured under a four-inch pressure;
2. The purposes for which he claims it, and the place of intended use;
3. The means by which he intends to divert it, and the size of the flume, ditch, pipe, or aqueduct in which he intends to divert it;

A copy of the notice must, within ten days after it is posted, be recorded in the office of the Recorder of the county in which it is posted.

§ 1416. Within sixty days after the notice is posted, the claimant must commence the excavation or construction of the works in which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted by snow or rain.

§ 1417. By "completion" is meant conducting the waters to the place of intended use.

§ 1418. By a compliance with the above rules the claimant's right to the use of the water relates back to the time the notice was posted.

§ 1419. A failure to comply with such rules deprives the claimants of the right to the use of the water as against a subsequent claimant who complies therewith.

§ 1420. Persons who have heretofore claimed the right to water, and who have not constructed works in which to divert it, and who have not diverted nor applied it to some useful purpose, must, after this title takes effect, and within twenty days thereafter, proceed as in this Title provided, or their right ceases.

§ 1421. The Recorder of each county must keep a book, in which he must record the notices provided for in this Title.

§ 1422. The rights of riparian proprietors are not affected by the provisions of this Title.

## Mineral Lands on School Sections in California.

AN ACT regulating the sale of mineral lands belonging to the State of California.—[Approved March 28, 1874.]

SECTION 1. Any person desiring to purchase from this State any portion of any sixteenth or thirty-sixth section, that shall have been designated by United States survey as of a mineral character, or which is so in fact, shall make an affidavit before some officer authorized to administer oaths, that he or she is a citizen of the United

States, or, if a foreigner, that he has filed his intention to become a citizen of the United States; that he or she is of lawful age, and desires to purchase said land, giving a description thereof by legal subdivisions; that he or she has not entered any portion of such mineral lands which, together with that applied for in such affidavit, will exceed forty acres; that there is no occupation of said land adverse to that which he or she holds; or, if there be any adverse occupation thereof, then he or she must state the name of such adverse occupant, together with the fact that the plat of the township has been on file six months or over, and that such adverse occupant has been in such occupation six months or over.

SEC. 2. Any person that shall be in the actual possession of any of said lands described in section one, at the time of the survey thereof by the United States, or at the time of the passage of this act, shall be considered a preferred purchaser thereof; *provided*, he or she make his or her application for the purchase of the same within six months after the filing of the plat of such survey in the United States Land Office, or within ten months after the passage of this act.

SEC. 3. When a contest shall arise as to the mineral character of the lands applied for, or from any other cause, the Surveyor-General, or the Register before whom the contest is made, must, within thirty days after the adverse application is filed, unless sooner referred at the request of either claimant, make an order referring such contest to the District Court of the county within which the land is situated, and must enter such order in the proper book of said office, and forward a copy thereof to the clerk of the court to which the reference is made. Upon the filing of a copy of such order with the clerk of the court, either party may commence an action in said court to determine the conflict, and the court shall have full and complete jurisdiction to hear and determine the same. Unless an action shall be commenced within ninety days after the copy of the order of reference shall have been filed with the clerk of the court, the party making such demand, or the adverse claimant, if the case is referred without demand, shall be deemed to have waived and surrendered his or her right to purchase, and the Surveyor-General or Register shall proceed as though his or her application had not been made.

SEC. 4. All lands sold under the provisions of this act shall be sold for the sum of two dollars and fifty cents per acre, in United States gold coin, payable to the Treasurer of the county in which the lands are situated, within fifty days from the date of the approval by the Surveyor-General; and in case said payment is not made within said fifty days, the land described in the location shall revert to the State without suit, and said location shall be and become null and void. All payments made to the County Treasurer as above provided, shall be paid over and accounted for as other moneys received for State lands are required to be paid over and accounted for.

SEC. 5. The Surveyor-General and Register shall, in the matter of approving locations, issuing certificates of purchase or patents, or in other proceedings relating to the sale of lands of a mineral character, which proceedings are not provided for in this act, proceed in the same manner as is now provided for the sale of sixteenth and thirty-sixth sections which are not of a mineral character.

SEC. 6. All patents issued by the State to any portion of any sixteenth or thirty-sixth section shall be subject to any vested and accrued water rights, ditches, and reservoirs used in connection therewith, acquired by priority of possession under local customs and the decisions of the courts, and the right of way for the construction of ditches and canals for mining and other purposes, over all of the sixteenth and thirty-sixth sections owned by the State, is hereby granted and confirmed.

SEC. 7. After the passage of this act, no patent shall be issued by the State for any of the lands described in this act, upon which, at the time of the application therefor, there was, and still is, any actual *bona fide* mining claim, except to the person who is the owner of such mining claim, under local mining customs, and not to such owner in excess of forty acres; and when an applicant for such lands, not own-

ing such mining claim, shall have paid the purchase money therefor, in whole or in part, he may present his certificate of purchase, and receive in exchange therefor from the Register a certificate showing the whole amount paid; and the Controller, upon the surrender of such certificate, must draw his warrant in favor of the person surrendering such certificate, for the amount therein specified, on the Treasurer of State, who must pay the same out of the fund into which the purchase money was paid; *provided*, that the owner of such mining claim, under such mining customs, shall apply to purchase the same within six months after the plat of the township containing such land shall have been filed in the local United States Land-Office, or within ten months after the passage of this act; *and, provided further*, that any owner of a *bona fide* mining claim, who shall have entered into an agreement with the applicant for any portion of the sixteenth or thirty-sixth section, upon which said mining claim is situated, for the procurement of a title for the same, shall not avail himself of the provisions of this section. The Governor of this State shall not sign any patent contrary to the provisions of this act.

SEC. 8. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 9. This act shall take effect and be in force from and after its passage.

### Sutro Tunnel Act.

AN ACT granting to A. Sutro the right of way, and granting other privileges to aid in the construction of a draining and exploring tunnel to the Comstock Lode, in the State of Nevada.—[Approved July 25, 1866]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That, for the purpose of the construction of a deed draining and exploring tunnel to and beyond the "Comstock Lode," so called, in the State of Nevada, the right of way is hereby granted to A. Sutro, his heirs and assigns, to run, construct, and excavate a mining, draining, and exploring tunnel; also to sink mining, working, or air shafts along the line or course of said tunnel, and connecting with the same at any point which may hereafter be selected by the grantee herein, his heirs or assigns. The said tunnel shall be at least eight feet high and eight feet wide, and shall commence at some point to be selected by the grantee herein, his heirs or assigns, at the hills near Carson River, and within the boundaries of Lyon County, and extending from said initial point in a westerly direction seven miles, more or less, to and beyond said Comstock Lode; and the same right of way shall extend northerly and southerly on the course of said lode, either within the same, or east or west of the same; and also on or along any other lode which may be discovered or developed by the said tunnel.

SEC. 2. *And be it further enacted*, That the right is hereby granted to the said A. Sutro, his heirs and assigns, to purchase, at one dollar and twenty-five cents per acre, a sufficient amount of public land near the mouth of said tunnel for the use of the same, not exceeding two sections, and such land shall not be mineral land, or in the bona fide possession of other persons who claim under any law of Congress at the time of the passage of this act, and all minerals existing or which shall be discovered therein are excepted from this grant; that upon filing a plat of said land the Secretary of the Interior shall withdraw the same from sale, and upon payment for the same a patent shall issue. And the said A. Sutro, his heirs and assigns, are hereby granted the right to purchase, at five dollars per acre, such mineral veins and lodes within two thousand feet on each side of said tunnel as shall be cut, discovered, or developed by running and constructing the same, through its entire extent, with all the dips, spurs, and angles of such lodes, subject, however, to the provisions of this act, and to such legislation as Congress may hereafter provide: *Provided*, that the Comstock Lode with its dips, spurs, and angles, is excepted from this grant, and all other lodes, with their dips, spurs, and angles, located within the said two thousand feet, and which are or may be, at the passage of this act, in the actual bona fide pos-

session of other persons, are hereby excepted from such grant. And the lodes herein excepted, other than the Comstock Lode, shall be withheld from sale by the United States; and if such lodes shall be abandoned or not worked, possessed, and held in conformity to existing mining rules, or such regulations as have been or may be prescribed by the Legislature of Nevada, they shall become subject to such right of purchase by the grantee herein, his heirs or assigns.

SEC. 3. *And be it further enacted.* That all persons, companies, or corporations owning claims or mines on said Comstock Lode or any other lode drained, benefited, or developed by said tunnel, shall hold their claims subject to the condition (which shall be expressed in any grant they may hereafter obtain from the United States,) that they shall contribute and pay to the owners of said tunnel the same rate of charges for draining or other benefits derived from said tunnel or its branches, as have been, or may hereafter be, named in agreement between such owners and the companies representing a majority of the estimated value of said Comstock Lode at the time of the passage of this act.

### Extracts from Railroad Act.

AN ACT to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes.—[*Approved July 1, 1862.*]

Section three of said act, as amended by the act of July 2, 1864, reads as follows:

SEC. 3. *And be it further enacted.* That there be, and is hereby, granted to said company, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores thereon, every alternate section of public land designated by odd numbers, to the amount of ten alternate sections per mile on each side of said railroad, on the line thereof, and within the limits of twenty miles on each side of said road, not sold, reserved, or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached, at the time the line of said road is definitely fixed: *Provided,* That all mineral lands shall be excepted from the operation of this act; but where the same shall contain timber, the timber thereon is hereby granted to said company. And all such lands, so granted by this section, which shall not be sold or disposed of by said company within three years after the entire road shall have been completed, shall be subject to settlement and pre-emption, like other lands, at a price not exceeding one dollar and twenty-five cents per acre, to be paid to said company.

AN ACT to amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," etc. \* \* \* approved July first, eighteen hundred and sixty-two.—[*Approved July 2, 1864.*]

Section four of the above act read as follows: \* \* \* \* \* "And the term 'mineral land,' wherever the same occurs in this act, and the act to which this is an amendment, shall not be construed to include coal and iron land. And any lands granted by this act, or the act to which this is an amendment, shall not defrat or impair any pre-emption, homestead, swamp land, or other lawful claim, nor include any Government reservation or mineral lands, or the improvements of any bona fide settler or [on] any lands returned and denominated as mineral lands, and the timber necessary to support his said improvements as a miner, or agriculturist, to be ascertained under such rules as have been or may be established by the Commissioner of the General Land Office, in conformity with the provisions of the pre-emption laws: *Provided,* That the quantity thus exempted by the operation of this act, and the act to which this act is an amendment, shall not exceed one hundred and sixty acres for each settler who claims as an agriculturist, and such quantity for each settler who claims as a miner, as the said commissioner may establish by general regulation: *Provided, also,* That the phrase 'but where the same shall contain timber, the timber thereon is hereby granted to said company,' in the proviso to said section three, shall not apply to the timber growing or being on any land farther than ten miles from the centre line of any one of said roads or branches mentioned in said act, or in this act. And all lands shall be excluded from the operation of this act, and of the act to which this act is an amendment, which were located, or selected to be located, under the provisions of an act entitled 'An act donating lands to the several States and territories which may provide colleges for the benefit of agriculture and the mechanic arts,' approved July second, eighteen hundred and sixty-two, and notice thereof given at the proper land office."

## Forms under the Revised Statutes of the United States.

## Form A.

## NOTICE OF LOCATION.

Notice is hereby given that the undersigned, having complied with the requirements of Chapter Six of Title Thirty-two of the Revised Statutes of the United States, and the local customs, laws and regulations, has located ——— linear feet on the ——— lode [twenty acres of placer mining ground], situated in ——— Mining District, ——— County, ———, and described as follows:

[Describe the claim accurately, by courses and distances, if possible; if a placer claim is located on surveyed land, by legal subdivision.]

Located ——— 187-. Recorded ——— 187-. ———, Locator.

———, County of ———, ss.

——— and ———, each for himself, and not one for the other, being first duly sworn, deposes and says, that he is of lawful age, and a citizen of the United States; that he has read the notice of location of ——— feet on the ——— lode, by ———; that the description of said lode, viz:

[Give description.]

as therein given is true and correct; that the said ——— has, in every respect, fully complied with the requirements of Chapter Six of Title Thirty-two of The Revised Statutes of the United States, and the local customs and laws regulating mining locations.

Subscribed and sworn to before me, this ——— day of ———, A. D. 187-, and I hereby certify that I consider the said ——— and ——— credible and reliable persons.

[SEAL.]

Notary Public (or other officer using a seal).

## Form B.

## APPLICATION TO UNITED STATES SURVEYOR-GENERAL FOR SURVEY OF MINING CLAIM.

To ———, United States Surveyor-General for ———, 187-.

SIR—In compliance with the provisions of Chapter Six of Title Thirty-two of The Revised Statutes of the United States, ——— herewith make application for an official survey of the mining claim known as the ——— mine, claimed by ———, located in ——— Mining District, in the County of ———, Township No. ———, Range No. ———, ——— base and meridian, in the State of California; and ——— request that you will send to ——— address an estimate of the amount to be deposited, in currency, for the work to be done in your office; and that after such deposit shall have been made, you will cause the said mining claim to be surveyed by ———, United States Deputy Surveyor, and you will cause to be made a plat thereof, indorsed with your approval, designating the number and description of the location, and the value of the labor and improvements on said mining claim; and that you will transmit duplicate copies of said plat to applicant, together with a certified copy of the field-notes of survey of said mining claim.

The expenses of office work, ——— dollars, ——— herewith tender, and request that prompt action be taken herein. ———, Claimant.

The majority of these forms are inserted by permission of Messrs. A. L. Baneroft & Co., who publish the corresponding blanks prepared by Mr. Henry N. Cobb, of the Department of the Interior, and first issued in his "U. S. Mining Decisions."

The printed blanks are sold by the publishers, and all booksellers and stationers.

**Form C.**

## APPLICATION FOR PATENT.

——, County of ——, ss.

APPLICATION FOR PATENT FOR THE —— MINING CLAIM.

To the Register and Receiver of the U. S. Land Office at ——.

——, being duly sworn according to law, deposes and says, that in virtue of a compliance with the mining rules, regulations and customs, by himself, the said —— and his co-claimants, ——, applicants for patent herein ha— become the owner of and are in the actual, quiet and undisturbed possession of —— linear feet of the —— vein, lode or deposit, bearing —— together with surface ground —— feet in width, for the convenient working thereof as allowed by local rules and customs of miners; said mineral claim, vein, lode or deposit and surface ground being situate in the —— mining district, County of —— and of —— and being more particularly set forth and described in the official field notes of survey thereof, hereto attached, dated —— day of —— A. D. 187—, and in the official plat of said survey, now posted conspicuously upon said mining claim or premises, a copy of which is filed herewith. Deponent further states that the facts relative to the right of possession of himself (and his said co-claimants hereinbefore named) to said mining claim, vein, lode or deposit and surface ground, so surveyed and platted, are substantially as follows, to wit:

[Description of claim.]

Which will more fully appear by reference to the copy of the original record of location and the abstract of title hereto attached and made a part of this affidavit; the value of the labor done and improvements made upon said —— claim, by himself and his grantors, being equal to the sum of five hundred dollars in gold coin of the United States. In consideration of which facts, and in conformity with the provisions of Chapter Six of Title Thirty-two of the Revised Statutes of the United States, application is hereby made for and in behalf of said —— for a patent from the Government of the United States for the said —— mining claim, vein, lode, deposit and the surface ground so officially surveyed and platted.

Subscribed and sworn to before me, this —— day of —— A. D. 187—; and I hereby certify that I consider the above deponent a credible and reliable person, and that the foregoing affidavit to which was attached the field notes of survey of the —— mining claim was read and examined by him before his signature was affixed thereto and the oath made by him.

[SEAL.]

[The above is slightly changed in applying for placer mines.]

**Form D.**

## PROOF OF POSTING NOTICE AND DIAGRAM OF THE CLAIM.

—— of ——, County of ——, ss.

—— and ——, each for himself, and not one for the other, being first duly sworn according to law, deposes and says, that he is a citizen of the United States, over the age of twenty-one years, and was present on the —— day of ——, A. D. 187—, when a plat representing the —— and certified to as correct by the United States Surveyor-General of ——, together with a notice of the intention of —— and —— to apply for a patent for the mining claim and premises so platted, was posted in a conspicuous place upon said mining claim, to-wit: upon ——, where the same could be easily seen and examined; the notice so conspicuously posted upon said claim being in words and figures as follows, to-wit:



## LEGAL NOTICE OF THE APPLICATION OF ——— AND ——— FOR A UNITED STATES PATENT.

Notice is hereby given that in pursuance of Chapter Six of Title Thirty-two of the Revised Statutes of the United States, ——— and ———, claiming ——— linear feet of the ——— vein, lode or mineral deposit, bearing ———, with surface ground ——— feet in width, lying and being situate within the ——— Mining District, County of ———, and ——— of ———, has made application to the United States for a patent for the said mining claim, which is more fully described as to metes and bounds by the official plat herewith posted and by the field-notes of survey thereof, now filed in the office of the Register of the District of Lands, subject to sale at ———, which field-notes of survey describe the boundaries and extent of said claim on the surface, with magnetic variation at ——— east, as follows, to-wit:

[Full description by courses and distances.]

the said mining claim being of record in the office of the Recorder of ———, at ———, in the county and ——— aforesaid, the presumed general course or direction of the said ——— vein, lode or mineral deposit being shown upon the plat posted herewith, as near as can be determined from present developments, this claim being for ——— linear feet thereof, together with the surface ground shown upon the official plat posted herewith, the said vein, lode and mining premises hereby sought to be patented being bounded on the ——— by the ——— mining claim, the said ——— claim being designated as Lot No. ——— in the official plat posted herewith.

Any and all persons claiming adversely the mining ground, vein, lode, premises or any portion thereof so described, surveyed, platted and applied for, are hereby notified that unless their adverse claims are duly filed as according to law and the regulations thereunder within sixty days from the date hereof with the Register of the United States Land Office at ———, in the ——— of ———, they will be barred, in virtue of the provisions of said statute.

Dated on the ground this ——— day of ———, A. D. 187-.

Witness:

Subscribed and sworn to before me this ——— day of ———, A. D. 187-, and I hereby certify that I consider the above deponents credible and reliable witnesses, and that the foregoing affidavit and notice was read by each of them before their signatures were affixed thereto and the oath made by them.

—

**Form E.**

**PROOF THAT PLAT AND NOTICE REMAINED POSTED ON CLAIM DURING TIME OF PUBLICATION.**

——— of ——— County of ———, ss.

———, being first duly sworn according to law, deposes and says, that he is claimant (and co-owner with ———) in the ——— mining claim, ——— mining district, ——— County, ———, the official plat of which premises, together with the notice of intention to apply for a patent therefor was posted thereon, on the ——— day of ———, A. D. 187-, as fully set forth and described in the affidavit of ——— and ——— dated the ——— day of ——— A. D. 187-, which affidavit was duly filed in the office of the Register, at ——— in this case; and that the plat and notice so mentioned and described, remained continuously and conspicuously posted upon said mining claim from the ——— day of ——— A. D. 187-, until and including the ——— day of ——— A. D. 187-, including the sixty days period during which notice of said application for patent was published in the newspaper.

Subscribed and sworn to before me, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 187-, and I hereby certify that the foregoing affidavit was read to the said \_\_\_\_\_ previous to his name being subscribed thereto; and that deponent is a respectable person to whose affidavit full faith and credit should be given.

[SEAL.]

\_\_\_\_\_, Notary Public.

**Form F.****REGISTER'S CERTIFICATE OF POSTING NOTICE FOR SIXTY DAYS.**

United States Land Office, at \_\_\_\_\_, \_\_\_\_\_, 187-.

I hereby certify that the official plat of the \_\_\_\_\_ lode was filed in this office on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 187-, and that the attached notice of the intention of \_\_\_\_\_ to apply for a patent for the mining claim or premises embraced by said plat, and described in the field-notes of survey thereof filed in said application, was posted conspicuously in this office on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 187-, and remained so posted until the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 187-, being the full period of sixty consecutive days, as required by law; and that said plat remained in this office during that time, subject to examination, and that no adverse claim thereto has been filed.

\_\_\_\_\_, Register.

[The notice posted in the office should be attached to this certificate.]

**Form G.****AGREEMENT OF PUBLISHER.**

The undersigned, publisher and proprietor of the \_\_\_\_\_, a \_\_\_\_\_ newspaper, published at \_\_\_\_\_, County of \_\_\_\_\_, and \_\_\_\_\_ of \_\_\_\_\_, do hereby agree to publish a notice, dated United States Land Office, \_\_\_\_\_, required by Chapter Six of Title Thirty-two of the Revised Statutes of the United States, of the intention of \_\_\_\_\_ to apply for a patent for his claim on the \_\_\_\_\_ lode, situated in \_\_\_\_\_ Mining District, County of \_\_\_\_\_, of \_\_\_\_\_, and to hold the said \_\_\_\_\_ alone responsible for the amount due for publishing the same. And it is hereby expressly stipulated and agreed that no claim shall be made against the Government of the United States, or its officers or agents, for such publication.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 187-.

Witness:

**Form H.****PROOF OF PUBLICATION.**

\_\_\_\_\_ of \_\_\_\_\_, County of \_\_\_\_\_, ss.

Reprinted copy of \_\_\_\_\_ being first duly sworn deposes and says, that he is Notice of Application. } the \_\_\_\_\_ of the \_\_\_\_\_, a newspaper published at \_\_\_\_\_, in \_\_\_\_\_ County, in the \_\_\_\_\_ of \_\_\_\_\_; that the notice of the application for a patent for the \_\_\_\_\_ mining claims, of which a copy is hereto attached, was first published in said newspaper, in its issue dated the \_\_\_\_\_ of \_\_\_\_\_ 187-, and was published in each [daily or weekly] issue of said newspaper for [fifty-nine consecutive days, or eight consecutive weeks] thereafter, the full period of sixty days, the last publication thereof being in the issue dated the \_\_\_\_\_ of \_\_\_\_\_ 187-.

Subscribed and sworn to before me, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 187-.

[SEAL.]

\_\_\_\_\_, Notary Public.

**Form I.****AFFIDAVIT OF FIVE HUNDRED DOLLARS IMPROVEMENT.**

\_\_\_\_\_ of \_\_\_\_\_ County of \_\_\_\_\_, ss.

\_\_\_\_\_ and \_\_\_\_\_, of lawful age, being first duly sworn according to law, depose and say that they are acquainted with the \_\_\_\_\_ mining claims in \_\_\_\_\_ mining district, county and \_\_\_\_\_ aforesaid, for which \_\_\_\_\_ has made application for patent under the provisions of Chapter Six of Title Thirty-two of the Revised Statutes of the United States, and that the labor done and improvements made thereon by the applicant and his grantors exceed five hundred dollars in value.

Subscribed and sworn to before me, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 187-.

\_\_\_\_\_  
[Form used by U. S. Surveyor General of California.]

**AFFIDAVIT OF EXPENDITURES UPON MINING CLAIMS.**

We, \_\_\_\_\_ and \_\_\_\_\_, being severally sworn, on oath depose and say, that we are citizens of the United States, and of the State of California; that we are well acquainted with the situation and character of the mining claim known as the \_\_\_\_\_ mine, claimed by \_\_\_\_\_, located in \_\_\_\_\_ Mining District, in \_\_\_\_\_ County, State of California, Township No. \_\_\_\_\_, Range No. \_\_\_\_\_, \_\_\_\_\_ base and meridian, surveyed by \_\_\_\_\_, U. S. Deputy Mineral Surveyor, in the month of \_\_\_\_\_, 187-; that the same is a \_\_\_\_\_ claim, containing \_\_\_\_\_; that we have no financial interest in said mining claim; that we are conversant with the working of mining claims, and that to the best of our knowledge and belief the amount expended on said mining claim in labor and improvements by the said claimant— or \_\_\_\_\_ grantor—, is not less than \_\_\_\_\_ dollars. Said improvement consists of

[SEAL.]

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 187-.

[SEAL.]

**Form J.****STATEMENT AND CHARGE OF FEES.**

\_\_\_\_\_ of \_\_\_\_\_, County of \_\_\_\_\_, ss.

\_\_\_\_\_ being first duly sworn according to law, deposes and says that he is the applicant for patent for the \_\_\_\_\_ lode in \_\_\_\_\_ Mining District, County of \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, under the provisions of Chapter Six of Title Thirty-two of the Revised Statutes of the United States, and that in the prosecution of said application he has paid out the following amount, viz: to the credit of the Surveyor-General's office, \_\_\_\_\_ dollars; for surveying, \_\_\_\_\_ dollars; for filing in the local land-office, \_\_\_\_\_ dollars; for publication of notice, \_\_\_\_\_ dollars; and for the land embraced in his claim, \_\_\_\_\_ dollars.

Subscribed and sworn to before me, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 187 .

[SEAL.]

\_\_\_\_\_, Notary Public.

**Form K.****PROOF OF OWNERSHIP AND POSSESSION IN CASE OF LOSS OR ABSENCE OF MINING RECORDS.**

\_\_\_\_\_ of \_\_\_\_\_, County of \_\_\_\_\_, ss.

\_\_\_\_\_ and \_\_\_\_\_, each for himself, and not one for the other, being first duly sworn according to law, deposes and says that he is a citizen of the United States,

over the age of twenty-one years, and a resident of \_\_\_\_\_ County, \_\_\_\_\_, and has resided in \_\_\_\_\_ Mining District, wherein the \_\_\_\_\_ mine is situate, since \_\_\_\_\_ day of \_\_\_\_\_, 187-. That since said date he has been acquainted with the \_\_\_\_\_ mine, and with the possessors and workers thereof. That said mine was located and has been possessed and worked in accordance with the customs and usages of miners in said district, and in conformity with the rules and regulations regulating the location, holding and working of mining claims, in force and observed in the State of \_\_\_\_\_. That there are no written records known to deponent existing in said mining district. That affiant is credibly informed and believes that the \_\_\_\_\_ mine was located in the year 18—, and that if any record was made of said location, and of the names of locators, the same has not been in existence for a long number of years past, and that by reason thereof the names of locators cannot now be ascertained, and no abstract of title from locators to the present owner can be made. That the possession of applicant and his predecessors in interest of said \_\_\_\_\_ mine has been actual, notorious and continuous, to the positive knowledge of deponent, since his residence in said mining district, and that such possession has been perfected and maintained, in conformity with mining usages and customs, and has been acquiesced in and respected by the miners of said district. That applicant's right to the said \_\_\_\_\_ mine is not in litigation within the knowledge of affiant, and that no action or actions have been commenced affecting the right to said mine since his acquaintance therewith (and that the time for the commencement thereof, as required to be instituted under the provisions of the Statute of Limitations of the \_\_\_\_\_ of \_\_\_\_\_, has long since elapsed). That applicant and his predecessors in interest have expended in the improvement, development and working of said mine a sum of money exceeding \_\_\_\_\_ dollars, as follows, to wit: \_\_\_\_\_.

Subscribed and sworn to before me, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 187-, and I certify that the aforementioned \_\_\_\_\_ and \_\_\_\_\_ are credible and respectable persons, to whose affidavits full faith and credit should be given.

[SEAL.]

\_\_\_\_\_

**Form L.**

**AFFIDAVIT OF CITIZENSHIP.**

\_\_\_\_\_ of \_\_\_\_\_, County of \_\_\_\_\_, ss.

\_\_\_\_\_, being first duly sworn according to law, deposes and says, that he is the applicant for patent for \_\_\_\_\_ mining claim, situate in \_\_\_\_\_ Mining District, County of \_\_\_\_\_; that he is a [native or naturalized] citizen of the United States, born in the County of \_\_\_\_\_, State of \_\_\_\_\_, in the year 18—, and is now a resident at \_\_\_\_\_.

Subscribed and sworn to before me, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 187-.

[SEAL.]

\_\_\_\_\_

**Form M.**

**CERTIFICATE THAT NO SUIT IS PENDING.**

\_\_\_\_\_ of \_\_\_\_\_, County of \_\_\_\_\_, ss.

I, \_\_\_\_\_, clerk of the court in and for \_\_\_\_\_ County, \_\_\_\_\_, do hereby certify that there is now no suit or action of any character pending in said court involving the right of possession to any portion of \_\_\_\_\_ mining claim, and that there has been no litigation before said court affecting the title to said claim, or any part thereof, for \_\_\_\_\_ years last past other than what has been finally decided in favor of \_\_\_\_\_.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at my office in \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 187-.

[SEAL.] \_\_\_\_\_, Clerk of the \_\_\_\_\_ Court \_\_\_\_\_.

\_\_\_\_\_

**Form N.**

POWER OF ATTORNEY.

Know all men by these presents, that we, \_\_\_\_\_ and \_\_\_\_\_, do hereby constitute and appoint \_\_\_\_\_ as our attorney in fact, for us and in our names to make application to the United States for the entry and purchase of certain Government lands, in \_\_\_\_\_ Mining District, \_\_\_\_\_ County, \_\_\_\_\_ of \_\_\_\_\_, known as the \_\_\_\_\_ mining claim and premises; and to have the same surveyed, and to any and all steps that may be necessary to procure from the Government of the United States a patent to the said lands and premises, granting the same to us. And to do all other acts appertaining to the said survey and entry aforesaid as we ourselves could do by our own act and in our own proper person.

In witness whereof we have hereunto set our hands and affixed our seals the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 187-.

\_\_\_\_\_ of \_\_\_\_\_, County of \_\_\_\_\_, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 187-, before me, \_\_\_\_\_, a Notary Public in and for the \_\_\_\_\_, County of \_\_\_\_\_, personally appeared \_\_\_\_\_, known to me to be the same person whose name \_\_\_\_\_ subscribed to the foregoing instrument, and acknowledged to me that \_\_\_\_\_ executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, the day and year in this certificate first above written.

[SEAL.]

\_\_\_\_\_, Notary Public.

\_\_\_\_\_

**Form O.**

PROTEST AND ADVERSE CLAIM.

United States Land-Office, \_\_\_\_\_ of \_\_\_\_\_.

In the matter of the application of \_\_\_\_\_, for a United States patent for the \_\_\_\_\_ lode or mining claim and the land and premises appertaining to said mine, situated in the \_\_\_\_\_ Mining District, in \_\_\_\_\_ County, \_\_\_\_\_ of \_\_\_\_\_.

*To the Register and Receiver of the United States Land Office at \_\_\_\_\_, and to the above-named applicant for patent for the \_\_\_\_\_ lode.*

You are hereby notified that \_\_\_\_\_, of the city of \_\_\_\_\_, County of \_\_\_\_\_, and \_\_\_\_\_ of \_\_\_\_\_, and a citizen of the United States of America, is the lawful owner, and entitled to the possession of \_\_\_\_\_ hundred feet of the said \_\_\_\_\_ lode or mine described in said application, as shown by the diagram posted on said claim, and the copy thereof filed in the land-office with said application, and as such owner this contestant, the said \_\_\_\_\_, does protest against the issuing of a patent thereon to said applicant, and does dispute and contest the right of said applicant therefor.

And this contestant does present the nature of his adverse claim, and does fully set forth the same in the affidavit hereto attached, marked Exhibit "A," and the further exhibits thereto attached, and made part of said affidavit.

The said \_\_\_\_\_ therefore respectfully asks the said Register and Receiver that all further proceedings in the matter be stayed, until a final settlement and adjudication of the rights of this contestant can be had in a court of competent jurisdiction.

(Place and Date.)

## EXHIBIT "A."

— of —, County of —, ss.

—, being first duly sworn, deposes and says, that he is a citizen of the United States, born in the State of —, and is now residing in —; that he is the contestant and protestant named in, and who subscribed the notice and protest hereto annexed. Affiant further says that he is the owner by purchase and in possession of the (adverse) lode or vein of quartz and other rock in place, bearing — and other metals. That the said lode is situated in the — Mining District, — County, — of —.

[The history of the lode may be given, if deemed advisable, as follows:]

This affiant further says, that on the day of its location the premises hereinafter described were mineral lands of the public domain, and entirely vacant and unoccupied, and were not owned, held or claimed by any person or party as mining ground or otherwise, and that while the same were so vacant and unoccupied and unclaimed. to wit:

On the — day of —, 18—, (name locators), each and all of them being citizens of the United States, entered upon and explored the premises, discovered and located the said — lode, and occupied the same as mining claims. That the said premises so located and appropriated consist of — thousand feet in a —-ly direction, and — thousand feet in a —-ly direction, together with all the dips, spurs, angles, depths, widths, offshoots and variations, as will fully appear by reference to the notice of location, a duly certified copy whereof is hereto annexed, marked Exhibit "B," and hereby made a part of this affidavit. That the locators, after the discovery of said — lode, drove a stake on said lode on the discovery claim, erected a monument of stone around said stake, and placed thereon a written notice of location, describing the claim so located and appropriated, giving the names of the locators and quantity taken by each, and after doing all the acts and performing all the labor required by the laws and regulations of said — Mining District and territory of —, the locators of said lode caused said notice to be filed and recorded in the proper books of record in the Recorder's office in said district on the — day of —, 18—.

Affiant further says, that the said locators remained continuously in possession of said lode, working upon the same, and within — months from the date of said location had done and performed work and labor on said location, in mining thereon and developing the same, more than — days work, and expended on said location more than — hundred dollars, and by said labor and money expended upon the said mining location and claim, had developed the same, and extracted therefrom more than — tons of ore.

And affiant further says, that said locators, in all respects, complied with every custom, rule, regulation and requirement of the mining laws, and every rule and custom established and in force in said — Mining District, and thereby became and were owners (except as against the paramount title of the United States) and the rightful possessors of said mining claims and premises.

And this affiant further says, that said locators proved and established to the satisfaction of the Recorder of said — Mining District that they had fully complied with all the rules, customs, regulations and requirements of the laws of said district, and thereupon the said Recorder issued to the locators of said — lode certificates confirming their titles and rights to said premises.

That the said lode was located and worked by the said locators as tenants in common, and they so continued in the rightful and undisputed possession thereof from the time of said location until on or about the — day of —, A. D. 18—, at which time the said locators and owners of said lode formed and organized under the laws of the State (or territory) of —, and incorporated under the name of the "—," and on the — day of —, A. D. 18—, each of the locators of said lode conveyed said lode, and each of the rights, titles and interests in and to said lode, to said "— mining company."

On the said — day of —, 18—, the said company entered into and upon said — lode and was seized and possessed thereof and every part and parcel of the same, and occupied and mined thereon until the — day of —, 18—, at which time the said — mining company sold and conveyed the same to this affiant, which said several transfers and conveyances will fully appear by reference to the abstract of title and paper hereto attached, marked Exhibit "D," and made a part of this affidavit.

[In case of individual transfers.]

And this affiant further says that the said —, who located claim — north-westerly of the said — lode, and the said —, who located claim — north-westerly thereon, were seized and possessed of said claims, and occupied and mined thereon until the — day of —, 18—, at which time the said — and —

sold and conveyed the same to ———, and thereupon the said ——— was seized and possessed of said mining claims and locations, and occupied and mined thereon until the ——— day of ———, 18—, at which time the said ——— sold and conveyed the same to this affiant, as will fully appear by reference to the abstract of title and paper hereto attached, marked Exhibit "D," and which this affiant hereby makes a part of this his affidavit.

Affiant further says, that he is now and has been in the occupation and possession of the said ——— lode since the ——— day of ———, 18—, and that said lode and mining claims were located, and the title thereto established, several ——— before said (applied for) ——— lode was located.

*[In case the history of the lode is not traced, the following may be inserted]:*

And the record title to said (adverse) lode is in this affiant, as will fully appear by reference to the abstract of title and paper hereto attached, marked Exhibit "D," and which this affiant hereby makes a part of this his affidavit.

Affiant further says, that said ——— lode, as shown by the notice and diagram posted on said claim, and the copy thereof filed in the United States Land-Office, at said ——— with said application for a patent, crosses and overlaps said ——— lode, and embraces about ——— hundred feet in length by ——— hundred feet in width of the said ——— lode, the property of this affiant, as fully appears by reference to the diagram or map duly certified by ———, United States Deputy Surveyor, hereto attached, marked Exhibit "C," and which diagram presents a correct description of the relative locations of the said (adverse) lode, and of the (pretended) (applied for) lode.

Affiant further says, that he is informed and believes that said applicant for patent well knew that affiant was the owner in possession and entitled to the possession of so much of said mining ground embraced within the survey and diagram of said applications, as is hereinbefore stated, and that this affiant is entitled to all the ——— and other metal in said adverse lode, and all that may be contained within a space of ——— feet on each side of said (adverse) lode.

And affiant further says, that this protest is made in entire good faith, and with the sole object of protesting the legal rights and property of this affiant in the said (adverse) lode and mining premises.

Subscribed and sworn to before me, this ——— day of ———, A. D. 187—.

#### SURVEYOR'S CERTIFICATE.

On the diagram marked Exhibit "C," the surveyor must certify in effect as follows:

I hereby certify that the above diagram correctly represents the conflict claimed to exist between the ——— and ——— lodes, as actually surveyed by me. And I further certify, that the value of the labor and improvements on the (adverse) lode, exceeds five hundred dollars.

(Place and date.) ———, U. S. Deputy Surveyor.

#### Form P.

#### NON-MINERAL AFFIDAVIT.

— of — County of —, ss.

— and — of said county and State, being first duly sworn, each for himself deposes and says that he is well acquainted with — claim, situated in — mining district, County of — and — of — claimed by —, applicant for United States patent therefor; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, in his knowledge, any placer, cement gravel, or other valuable mineral deposits; that no portion of said land is claimed for mining purposes under the local customs or rules of miners, or otherwise; that no portion of said land is worked for minerals during any part of the year by any person or persons; that said land is essentially non-mineral land, and that he has no interest whatever in said —

U. S. MIN. S. 7.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 187—; and I hereby certify that the foregoing affidavit was read to the said \_\_\_\_\_ previous to his name being subscribed thereto; and that deponent is a respectable person to whose affidavit full faith and credit should be given.

\_\_\_\_\_  
**Form Q.**

**PROOF THAT NO KNOWN VEINS EXIST IN A PLACER MINING CLAIM.**

\_\_\_\_\_ of \_\_\_\_\_ County of \_\_\_\_\_, ss.

\_\_\_\_\_ and \_\_\_\_\_, of the said county and State, being first duly sworn, each for himself, deposes and says, that he is well acquainted with the \_\_\_\_\_ placer mining claim, embracing \_\_\_\_\_, situated in the \_\_\_\_\_ mining district, in the county of \_\_\_\_\_, and \_\_\_\_\_ of \_\_\_\_\_, owned and worked by \_\_\_\_\_, applicant for United States patent; that for many years he has resided near, and often been upon the said mining premises, and that no known vein or veins of quartz, or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper exist on said mining claim, or on any part thereof, so far as he knows, and he verily believes that none exist thereon. And further, that he has no interest whatever in the said placer mine of \_\_\_\_\_.

Subscribed and sworn to before me, this \_\_\_\_\_ day \_\_\_\_\_, A. D. 187 .

\_\_\_\_\_  
**Form R.**

**NOTICE OF APPLICATION FOR A UNITED STATES PATENT.**

[Notice to be posted with plat on the claim.]

Notice is hereby given that in pursuance of Chapter Six, Title Thirty-two of the Revised Statutes of the United States, \_\_\_\_\_ and \_\_\_\_\_, claiming \_\_\_\_\_ linear feet of the \_\_\_\_\_ vein, lode or mineral deposit, bearing \_\_\_\_\_, with surface ground \_\_\_\_\_ feet in width, lying and being situate within the \_\_\_\_\_ mining district, County of \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_, has made application to the United States for a patent for the said mining claim, which is more fully described as to metes and bounds by the official plat herewith posted, and by the field-notes of survey thereof, now filed in the office of the Register of the district of lands, subject to sale at \_\_\_\_\_, which field-notes of survey describe the boundaries and extent of said claim on the surface, with magnetic variation at \_\_\_\_\_ east, as follows, to wit:

[Full description given by courses and distances.]

the said mining claim being of record in the office of the Recorder of \_\_\_\_\_ at \_\_\_\_\_ in the County and \_\_\_\_\_ aforesaid, the presumed general course or direction of the said \_\_\_\_\_ vein, lode or mineral deposit being shown upon the plat posted herewith, as near as can be determined from present developments, this claim being for \_\_\_\_\_ linear feet thereof, together with the surface ground shown upon the official plat posted herewith, the said vein, lode and mining premises hereby sought to be patented, being bounded as follows, to wit:

[Insert description.]

that said claim being designated as Lot No. \_\_\_\_\_, in the official plat posted herewith.

Any and all persons claiming adversely the mining ground, vein, lode, premises, or any portion thereof so described, surveyed, platted and applied for, are hereby notified that unless their adverse claims are duly filed as according to law, and the



regulations thereunder within sixty days from the date hereof, with the Register of the United States Land Office at \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_ they will be barred, in virtue of the provisions of said statute.

Dated on the ground, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 187

Witnesses:

**Form S:**

**NOTICE FOR PUBLICATION IN NEWSPAPER.**

*Application for a Patent to the \_\_\_\_\_ Mine, No. \_\_\_\_\_.*

United States Land Office, \_\_\_\_\_ 187 .

Notice is hereby given that \_\_\_\_\_, whose post office address is \_\_\_\_\_, has this day filed his application for a patent for \_\_\_\_\_ linear feet of the \_\_\_\_\_ mine or vein bearing \_\_\_\_\_ with surface ground \_\_\_\_\_ feet in width, situate, lying and being in \_\_\_\_\_ mining district, County of \_\_\_\_\_ and State of \_\_\_\_\_, and known and designated by the field-notes and official plat on file in this office as Lot No. \_\_\_\_\_ in township \_\_\_\_\_ range \_\_\_\_\_ of \_\_\_\_\_ meridian \_\_\_\_\_. The exterior boundaries of said Lot No. \_\_\_\_\_ being as follows, to wit:

Variation \_\_\_\_\_. Commencing \_\_\_\_\_ to place of beginning, containing \_\_\_\_\_ acres. This claim is bounded \_\_\_\_\_:

*[Here insert boundaries.]*

The location of this mine is duly recorded in the Recorder's office of \_\_\_\_\_, in Book \_\_\_\_\_ of \_\_\_\_\_.

Any and all persons claiming adversely any portion of said \_\_\_\_\_ mine or said mining ground as hereinbefore described, are required to file their adverse claim with the Register of the United States Land Office at \_\_\_\_\_, in the State of \_\_\_\_\_, during the sixty days period of publication hereof, or they will be barred by virtue of the provisions of the statute. \_\_\_\_\_, Register.

**Form T.**

**APPLICATION FOR COAL LAND.**

I, \_\_\_\_\_, hereby apply, under the provisions of the Revised Statutes of the United States (sections 2317 to 2352 inclusive), providing for the sale of the lands of the United States containing coal, to purchase the \_\_\_\_\_ quarter of section \_\_\_\_\_, in township \_\_\_\_\_ of range \_\_\_\_\_, in the district of lands subject to sale at the land-office at \_\_\_\_\_, and containing \_\_\_\_\_ acres, and I solemnly swear that no portion of said tract is in the possession of any other party; that I am twenty-one years of age, a citizen of the United States, [or have declared my intention to become a citizen of the United States.] and have never held nor purchased lands under said act, either as an individual or as a member of an association; and I do further swear that I am well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that there is not, to my knowledge, within the limits thereof, any vein or lode of quartz or other rock in place bearing gold, silver or copper; and that there is not within the limits of said land, to my knowledge, any valuable mineral deposit other than coal. So help me God.

**Form U.****DECLARATORY STATEMENT ON APPLICATION FOR COAL LAND.**

I, ———, being ——— years of age, and a citizen of the United States, [or having declared my intention to become a citizen of the United States,] and never having, either as an individual or as a member of an association, held or purchased any coal lands under the act approved March 3, 1873, entitled "An act to provide for the sale of the land of the United States containing coal," or under Chapter Six of Title Thirty-two of the Revised Statutes of the United States, do hereby declare my intention to purchase, under the provisions of said Chapter Six of Title Thirty-two of the Revised Statutes of the United States, the ——— quarter of section ———, in township ———, of range ———, of lands subject to sale at the district land-office at ———, and that I came into possession of said tract on the ——— day of ———, A. D. 18—, and have ever since remained in actual possession continuously, and have expended in labor and improvements on said mine the sum of ——— dollars, the labor and improvements being as follows:

*[Here describe the nature and character of the improvements.]*

and I do furthermore solemnly swear that I am well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that there is not to my knowledge within the limits thereof, any vein or lode of quartz or other rock in place bearing gold, silver or copper; and that there is not within the limits of said land, to my knowledge, any valuable mineral deposit other than coal.

**Form V.****AFFIDAVIT ON APPLICATION FOR COAL LAND.**

I, ———, claiming the right of purchase under Chapter Six of Title Thirty-two of the Revised Statutes of the United States (sections 2347 to 2352), providing for the sale of the lands of the United States containing coal, to the ——— quarter of section ———, in township ———, of range ———, subject to sale at ———, do solemnly swear that I have never had the right of purchase under this act, either as an individual or a member of an association, and that I have never held any other lands under its provisions; I further swear that I have expended in developing coal mines on said tract in labor and improvements the sum of ——— dollars, the nature of such improvements being as follows:

*[Here describe the nature and character of the improvements.]*

that I am now in the actual possession of said mines, and make the entry for my own use and benefit, and not directly or indirectly for the use and benefit of any other party; and I do furthermore swear that I am well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that there is not, to my knowledge, within the limits thereof, any vein or lode of quartz or other rock in place bearing gold, silver, or copper; and that there is not within the limits of said land, to my knowledge, any valuable mineral deposit other than coal. So help me God.

I, ———, of the land-office at ———, do hereby certify that the above affidavit was sworn and subscribed to before me this ——— day of ———, A. D. 18—.

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